LAND TENURES
IN THE
MADRAS PRESIDENCY.

LAND TENURES

IN THE

MADRAS PRESIDENCY

WITH AN APPENDIX AND A GLOSSARY

BY

S. SUNDARARAJA IYENGAR, B.A., B.L.,
VAKIL, HIGH COURT, MADRAS.

THE MODERN PRINTING WORKS, MOUNT ROAD, MADRAS.
1916

[*All Rights Reserved.*]

PREFACE.

THE absence of a book devoted solely to land tenures of this Presidency made me attempt this book, and I have tried to bring within a small compass the information derivable from books and official publications and decisions of Courts. As a book of this kind necessitates the treatment of the law of landlord and tenant, I have shortly dealt with it, and in order to make the book complete I have added a Chapter on the law regarding the recovery and mode of realising arrears of revenue and rent.

An apology is necessary for the title of the book. Though an attempt is made in Chapter I to show that tenures involving the idea of holdings derivatively under another do not exist in India, I have retained the word in the title for want of a better word to denote comprehensively all holdings irrespective of their origin.

To make the book self-contained I have added an Appendix containing nearly all the Acts relating to land in this Presidency and a Glossary of revenue terms current herein.

I take this opportunity of thanking my friends who helped me in this book and especially Mr. P.R. Ganapathy Iyer, High Court Vakil, for his valuable suggestions and advice.

I am not unaware of the shortcomings of this book, and I trust they are only such as are inseparable from the first edition of a book of this kind.

MYLAPORE, MADRAS,
3—1—1916.

S. SUNDARARAJA IYENGAR.

CONTENTS.

	PAGES
CHAPTER I.	
Origin and Existence of Private Property	1—25
CHAPTER II.	
Property, Ownership and Possession	26—39
CHAPTER III.	
The Mirasi Tenure	40—52
CHAPTER IV.	
The Ryotwari Tenure	53—67
CHAPTER V.	
Permanently Settled Estates	68—91
CHAPTER VI.	
Beneficial Tenures	92—110
CHAPTER VII.	
Personal Grants	111—131
CHAPTER VIII.	
Service Grants	132—156
CHAPTER IX.	
Service Grants—Resumption and Enfranchisement	157—174
CHAPTER X.	
Occupancy and Non-Occupancy Ryots	175—197

PAGES.

CHAPTER XI.

Leases and their incidents .... 198—233

CHAPTER XII.

Construction of Grants and Leases .... 234—243

CHAPTER XIII.

Malabar Land Tenures .... 244—259

CHAPTER XIV.

Recovery and Mode of realising arrears .... 260—278

APPENDIX.

The Crown Grants Act 279
Permanent Settlement Regulation, XXV of 1802 ... 280—283
Permanent Settlement Interpretation Regulation, IV of 1882 284
Land Registration Regulation, XXVI of 1802 ... 285
Malabar Land Registration, Act III of 1896 ... 286—289
Land Revenue Assessment, Act I of 1876 ... 290—291
,, ,, Amendment, Act II of 1914. 292
Madras Impartible Estates Act, II of 1904 ... 293—296
Karnams Regulation, XXIX of 1802 ... ... 297—300
Hereditary Village Offices Act, III of 1895 ... 301—308
Proprietary Estates Village Service, Act II of 1894 ... 309—316
Limited Proprietors, Act IV of 1911 ... ... 317—319
Revenue Recovery, Act II of 1864 ... ... 320—330
,, ,, ,, I of 1890 ... ... 331—333
,, ,, (Military Proprietors), Regulation VIII of 1817 ... ... 334—335
Madras City Land Revenue, Act XII of 1851 ... 336—338
,, ,, Amendment, Act VI of 1867. 339—343
Land-holders' Public Charges and Duties Act, II of 1853. 344
Revenue Recovery Summonses, Act III of 1869 ... 345
Land Improvement Loans, Act XIX of 1883 ... 346—349
Madras Village-Lands Disputes, Regulation XII of 1861. 350—354
Claims to Waste-Lands, Act XXIII of 1863 ... 355—359
Madras Survey and Boundaries, Act IV of 1897 ... 360—363

		PAGES.
Madras Compulsory Labour, Act I of 1858	...	369—370
Madras Irrigation Cess, Act VII of 1865	...	371—372
,, ,, (Amending) Act V of 1900	...	373
Madras Land Encroachment, Act III of 1905	...	374—378
Madras Enfranchised Inams, Act IV of 1862	...	379
,, ,, IV of 1866	...	380
Madras Inams, Act VIII of 1869 ...	...	381
Pensions Act, XXIII of 1871 ...	...	382—385
Transfer of Property, Act IV of 1882 ...	...	386—390
Malabar Tenants' Compensation, Act I of 1900	...	391—395
Madras Estates Land Act I of 1908 ...	...	396—454
Glossary of South Indian Revenue Terms	....	455—468
Index	....	469—487

LIST OF ABBREVIATIONS.

Agra	... Agra High Court Reports.
All.	... The Indian Law Reports, Allahabad Series.
Baden Powell, L.R. B.I.,	... Land Revenue in British India by Baden Powell (second edition.)
————.—L.S.B.I.	Land Systems of British India by Baden-Powell, 3 Volumes.
—— ——.——Vill. Com.	... The Indian Village community by Baden-Powell (1896).
Ben. L.R.	... Bengal Law Reports.
Bom.	... The Indian Law Reports, Bombay Series.
Bom. H.C.R.	... Bombay High Court Reports.
,, A.C.J.	,, ,, Appellate Civil Jurisdiction.
,, App.	,, ,, Appendix.
Bom. L.R.	... Bombay Law Reporter.
C.L.J.	... Calcutta Law Journal.
C.L.R.	... Calcutta Law Reports.
C.W.N.	... Calcutta Weekly Notes.
Cal.	... The Indian Law Reports, Calcutta Series.
Dt. M.	... District Manual issued for each district in the Presidency.
Elphin. Hist.	... The History of India by MountStuart Elphinstone, (seventh edition.)
Glossary	... Wilson's Glossary.
Griffith	... Translations of the Hymns of the Atharva Veda by Mr. R.T.H. Griffith (1895) and of Rig Veda by the same author (second edition), published at Benares.
I. A.	... Indian Appeals (Privy Council.)
I. C.	... Indian Cases.
L. W.	... Law Weekly.
M.H.C.R.	... Madras High Court Reports.
M.I.A.	... Moore's Indian Appeals.
M.L.J.	... Madras Law Journal.
M.L.R.	... Madras Law Reporter.

M.L.T. ...	Madras Law Times.
M.S.D. ...	Madras Sudder Decisions.
M.W.N. ...	Madras Weekly Notes.
Mad. ...	The Indian Law Reports, Madras Series.
Maine Vill. Com. ...	The village communities in the East and West by Sir. H.S. Maine.
Man of Adminis. ...	Manual of Administration by Dr. Maclean, 3 volumes.
Mandlik's Vya. May. and Yajna.	Translation by Rao Saheb V.N. Mandlik of the Vyavahara Mayukha and Yajnavalkya Smriti (1880).
Minute: Turner's Minute. ...	Minute on the Draft Bill relating to Land Tenures of Malabar by Sir Charles Turner.
Mirasi Papers. ...	A Collection of papers on mirasi right by Huddle-Stone.
Moore. ...	Malabar Law and Custom by Mr. Lewis Moore (third edition)
Munro. ...	Selections from the Minutes of Sir Thomas Munro by Sir Alexander Arbuthnot (1881)
N.W.P. ...	North West Provinces High Court Reports.
Ramachendrier. ...	Manual of Malabar Law, by Cuddalore Ramachendra Aiyar (1883).
S.B.E. ...	Sacred Books of the East.
S.O. ...	Standing Orders of the Board of Revenue (1913)
Srinivasa Raghava Iyengar's Progress,...	Progress of the Madras Presidency during the last forty years by Dewan Bahadur S. Srinivasa Raghava Iyengar (1893)
W.R. ...	Weekly Reporter.
Wilks' Hist. of My. ...	The History of Mysore by Lieut. Colonel Marks Wilks (second edition.)
Wilson ...	Wilson's Glossary.

ERRATA.

PAGE.				
iv.	for	"Regulation IV of 1882"	read	"Regulation IV of 1822"
		"XII of 1861."		"XII of 1816."
67.	,,	"30 Mad. 461"	read	"29 Mad. 461."
90.	,,	"state"	read	"estate."
104.	,,	"*monge*"	read	"*mouge*."
111.	,,	"to"	read	"in."
162.	,,	"are"	read	"were."
247.	,,	"grant"	read	"grants."
350 & 351.	,,	"Regulation XII of 1861"	read	"Regulation XII of 1816."

TABLE OF CASES CITED.

A

PAGE.

Abbakka Shettati v. Seshamma, (1914) M.W.N. 915 224
Abdul Hakim v. Doorga Proshad Banerjee, 5 Cal. 4 ... 209
———Karim v. Chinna Bibi, 19 I.C. 119 228
Abdulla Rowthen v. Subbarayar, 2 Mad. 346 ... ... 202, 224
————v. Raja Vasudeva Ravi Varma, 29 M.L.J. 316 ... 395
Abhiram Goswami v. Shyama Charan Nandy, 36 Cal. 1003 : 36 I.A. 148 200,236
Abyayessari Debi v. Shidhessari Debi, 16 Cal. 513 212
Achayya v. Hanumantrayudu, 14 Mad. 269 210
Achutha Menon v. Sankaran Nair, 36 Mad. 380 249
Achutan Nayar v. Keshava, 17 Mad. 271 ... ... 252, 253, 255
Adiraja Shetty v. Billa Tyampa, 20 M.L.J. 944 226
Agin Bindh Upadya v. Mohun Bitram Singh, 30 Cal. 20 ... 200,242,243
Ahmed Kutti v. Kunhamed, 10 Mad. 192 ... ... 252, 253
Akbur Ali v. Byea Lal Jaha, 6 Cal. 666 162
Alaga Kudumban v. Sivarama Iyer, 29 I.C. 31 183
Alagappa Mudaliar v. Sivarama Sundara Mudaliar, 19 Mad. 211 ... 151
Ali v. Bachubibi, 5 Bom. L.R. 264 37
Ambalavana Chetty v. Singaravelu Udayar, (1912) M.W.N. 669 ... 227
————Pandarasannadhi v. Kuppachi Janaki Ammal, 26 I.C. 618 ... 97
————v. The Secretary of State, 28 Mad. 539 102
Ambu v. Raman, 9 Mad. 371 257
Amjed Ali v. Ala Baksh, 9 W.R. 537 204
Ammotti Hagi v. Kunhayenkutti, 15 Mad. 480 257
Ammu v. Rama Krishna Sastri, 2 Mad. 226 223
Ananda Prasad Mukhopadya v. Mathura Nath Nag Mazumdar, 9 C.L. J. 588 234,241
Anandayyan v. Devarajayyan, 2 M.H.C.R. 171 46
Anandemoyi v. Lakshmichander, 3 C.L.J. 274 225
Ananthanarayana Iyer v. Athimathu Iyer, (1914) M.W.N. 385 ... 150
Anantha Padmanabha Pillai v. Gopalakrishnier, (1915) M.W.N. 277 64
————Tirtha Chariar v. Nagamuthu Ambalagaran, 4 Mad. 200 ... 114
Andi Achen v. Kombi Achen, 18 Mad. 187 ... ... 126, 128
Andirazu Verrayya v. Andirazu Sangayya, 34 Mad. 177 ... 155
Andi Thevan v. Palani Thevan, 16 I. C. 702 198
Angammal v. Aslami Sahib, 38 Mad. 710 ... ... 217, 218
Anganayya v. Daroor Narasanna, 18 M. L. J. 247 173
Anna Bibi v. Najmun Nissa, 31 All. 882 ... ... 130, 131

	PAGE.
Annamalai v. Cloete, 6 Mad. 189	363
Annammal v. Venkata Raghava Chari, 13 M.L J. 137 ...	65
Annayya v. Chinnan, 20 M.L.J. 355	223
Ansar Ali Jamadar v. Grey, 2 C. L. J. 203	169, 225
Antaji Keshav Tamer, *In Re*, 18 Bom. 670	100
Anund Lal Singh Deo v. Maharaja Dheraj Gurrood Narayan Deo, 5 M. I. A. 82	120
Appaja Shetty v. Mahammad Beary, 29 M.L J. 381	226
Appala Narasimhulu v. Sanyasi, 38 Mad. 33	197
Appalaswamy v. Raja of Vizianagaram, 26 M.L J. 50 ...	182
Appa Pillai v. Gopalasami Reddi, (1860) M.S.D. 41	138
Appa Rao v. Venkatadri, 17 M.L.J. 197	223
Appasami Iyer v. The Secretary of State, 7 M.L.T. 349 ...	90
——— Mudaly v. Rangappa Nattan, 4 Mad. 367	232
Appu Badgavla v. Narhari Annojee, 3 Bom. 21	205
Apurba Krishna Roy v. Asutosh Dutt, 9 C.W.N. 122 ...	228
Archakan v. Kallur Venkata Reddi, 14 I. C. 329	192
Arumugam Pillai v. Vijiammal, 4 Mad. 338	143, 144
Arunachala Ambalam v. Orr, 29 I. C. 634	98
Arunachellam Chetti v. Muthayan Thevan, 26 M.L.J. 575 ...	182
——— v. Syed Ahmed Ambalam, 2 L. W. 1117	181
Arunachala Sastry v. Krishna Sastry, 9 M.L T. 360	195
Ashrufoonissa Begum v. Shaik Tosudduck Hossain, 22 W.R. 260 ...	211
Ashtamurti Nambudri v. Pathuma, 17 I. C. 134	394
Ashutosh Dhar v. Joy Lal Sardar, 17 C.L.J. 50	214
Atchaparaju v. Raja Velugoti Krishnaya Chendraluvaru, 38 Mad. 163	190, 193
Ayesha Bibi v. Kunhye Molla, 12 W.R. 146	37, 38
Ayyamperumal Udayan v. Ramaswamy Chettiar, 29 M.L.J. 362 ...	183
Aziz-un-Nissa v. Tasadduq Hussain Khan, 23 All. 324; 28 I.A. 65 ...	120, 237

B

Baba v. Vishvanatha Joshi, 8 Bom. 228	224
Babaji v. Narayan, 3 Bom. 340	12, 96
——Hari v. Rajaram Ballal, 1 Bom. 75 ...	126, 127, 128, 129
Baboo Gopal Lal Thakoor v. Taluck Chunder Rai, 10 M.I.A. 183 ...	200
——Kouldeep Narain Singh v. Mahadeo Singh, 6 W.R 209 ...	164
Bacharan Mundal v. Peary Mohun Banerjee, 9 Cal. 813 ...	162
Bada v. Hussi Bhai, 7 Mad. 236	172
Badi Bibi Sabibal v. Sami Pillai, 18 Mad. 257	117
Badrinath v. Bhajan Lal, 5 All. 191	201
Baidya Nath Mondal v. Sadharam Misri, 8 C.W.N. 751 ...	236
Bai Ganga v. Dullabh Parag, 5 Bom. H.C.R. (A.C.J). 179 ...	198
Balakrishna Rao v. The Secretary of State, 29 M.L.J. 270 ...	103
Bala Khushaba v. Abai Amrita Vaghmode, 11 Bom. L.R. 1093 ...	37, 223
Balambhat v. Vinak Ganpatrav, 35 Bom. 239	226
Balbir Singh v. The Secretary of State, 22 All. 96	237
Balijepalli Seshayya v. Balijepalli Subbayya, 30 Mad. 320 ...	156

	PAGE.
Balu Kasturi Singh v. Raj Kumar Babu Bissun Pragas Narain Singh, 8 C.W.N. 876	39
Balvant Ramachandra v. The Secretary of State, 32 Bom. 432 ...	97, 102
———Natu v. The Secretary of State, 29 Bom. 480	126, 128
Baneswar Mukerji v. Umesh Chandra Chakrabarti, 37 Cal. 626 ...	235
Baptist Missionary Society v. Ratnakaro Patro, (1911) 2 M.W.N. 517	193
Barada Prosad v. Prosanna Kumar, 16 C.W.N. 564	199
Barendra Kishore v. Roshan Khan, 39 Cal. 453	228
Baroda Prosad Roy v. Annoda Mohun Roy, 13 C. L. J. 30 ...	39
Basarat Ali Khan v. Manivulla, 10 C. L. J. 49	222
Basu Kumthy v. Venkamma Hegadathi, 9 M. L. T. 355 ...	229
Bejoy Chander Banerjee v. Prosonno Mookerjee, 4 Cal. 327 ...	38
Benin Menahim Yusuf v. Johon Peteologo, 8 Bom. L.R. 580 ...	205
Beni Pershad Koeri v. Dudhanath Roy, 27 Cal. 156... ...	243
Beni Ram v. Kunda Lal, 21 All. 496 : 26 I.A. 58	199, 217
Benjamin Douzelle v. Girdharee Singh, 23 W. R. 121 ...	211, 212
Bhadrayya v. Bapayya, 21 M.L.J. 803	97, 195
Bhagwansingh Daulat Singh v. The Secretary of State, 10 Bom. L.R. 571	37
Bharkaradu v. Subbarayudu, 38 Mad. 674	377
Bhaskarappa v. The Collector of North Canara, 3 Bom. 452 ...	20, 35
Bhavanamma v. Ramaswami, 4 Mad. 193	82, 120, 121
Bhaya Dirguj Deo v. Pande Fatesh Bahadur Ram, 3 C.L.J. 521 ...	119, 120
Bheema Shunker v. Jamas Jee Shapor Jee, 2 M.I.A. 23 ...	12, 96
Bhiki Rai v. Udit Narain Singh, 25 All. 366	37
Bhimapaiya v. Ramachandra Bhimarao, 22 Bom. 422 ...	165, 168
Bhishnath Chowdhry v. Radha Charan Gangooly, 20 W.R. 465 ...	162
Bhoja Haridas Adhikari v. Bhagabati Das, 18 C. L. J. 48 ...	235
Bholanath Singh v. Wood, 32 Cal. 287	39
Bhuggobut Singh v. Durg Bijoy Singh, 16 W.R. 95	214
Bhutia Dhondu v. Ambo, 13 Bom. 294	210, 221
Bijoychand Mahatab v. Kalipada Chatterjee, 41 Cal. 57 ...	169
Bijoy Krishna Karmakar v. Ranfil Lal Karmakar, 38 Cal. 694 ...	234
Bilamoni Dasi v. Raje Sheo Prasad Singh, 8 Cal. 646 ; 9 I.A. 33 ...	200, 243
Binode Behari Roy v. Masseyk, 15 W.R. 493	199
Blake v. Savuntharathammal, 22 Mad. 116	138
Boddopalli Jagganadham v. The Secretary of State, 27 Mad. 16 ...	157, 160
Boja Sellappa Chetty v. Vriddachala Chetty, 30 Mad. 35 ...	260
Bommarazu v. Seshamma, 22 Mad. 438	80, 81
Bommayya Naidu v. Chidambaram Chettiar, 22 Mad. 440 ...	269
Boyanapalli Venugopala Rao v. Pathapalli Venkata Narasimha Rao, (1911) 2 M.W.N. 384	163
Boyd v. Kreig, 17 Cal. 548	205
Brett v. Ellaiya, 13 M.I.A. 104	114, 240
Brojo Nath Bose v. Durga Prasad Singh, 34 Cal. 753 ...	84, 85
————v. Durga Persad Singh, 5 C.L.J. 583 ...	39, 165, 168
Brojonath Paul Chowdhry v. Heera Laul Pal, 10 W.R. 120 ...	212

PAGE.

Brundavana Harish Chandra Jagad Raja Bahadur v. Jagannadha Singh Santo, 2 L.W. 29 178
———v. Ramayya, 26 M.L.J. 600 ... ... 177, 197
Bubo Misser v. Srinivasa Misser, 5 Ben. L.R. 517 151
Bullen v. Lalit Jha, 3 Ben. L.R. App. 119 210,212
Bunsee Dhur Ghose v. Bheem Lal Sahoo, 24 W. R. 219 ... 214
Burdekanath Roy v. Ahik Mungoore Daslat, 4 M.I.A. 321 ... 201
Burn and Co. v. Rusho Moyee Dossee, 14 W. R. 85 223

C

Canniah Chetty v. Elamunda Chetty, 2 L.W. 152 207
Chaganlal v. Pranjivan, 34 Bom. 154 129
Chandra Kanta Das v. Ramanath Barman, 11 C.L.J. 591 ... 214
———Kumar Singh Roy v. Kali Prosad Chuckerbutty. 9 I.C. 223 235
Chandramma v. Venkataraju, 10 Mad. 226 143,144
Chandramoni Mohanti v. Manmatha Nath Bose, 11 C.L.J. 68 ... 240
Chandra v. Dayi Bhau, 24 Bom. 504. 227
Cheekati Zemindar v. Ramasooru Dhora, 23 Mad. 318 ... 22, 64
Chellappa Nattan v. Streenivasa Raghava Chary, 1 M.L.R. 28 ... 232
Chengiah v. Raja of Kalahasti, 24 M.L.J. 263 226
Cheria Krishna Nambudri v. Vishnu Nambudri, 5 Mad. 198 ... 257, 258
Churkal Kovilagam, Raja of v. Mootha Raja, 7 M.H.C.R. 210 ... 151
Cherukuri Venkanna v. Lakshmi Narayan Sastrulu, 2 M.H.C.R. 327. 171
Chidambara Chetty v. Ranga Krishna Muthu Vira Puchaiya Naicker, 1 I. A. 241 : 22 W. R. 148 209
Chidambaram Pillai v. Muthammal, 1 L.W. 414 193
———v. Tiruvengadatha Ayyangar, 7 M.L.J. 1 64
Chidambara Rao v. The Secretary of State, 26 Mad. 66 ... 90
Chilamakurti Naganna v. Kavipurapu Rama Rao, 28 I. C. 836 ... 192
Chinnammal Achi v. Saminatha Malavaroyan, 30 Mad. 367 ... 272
Chinnan v. Kondam Naidu, 26 M.L.J. 169 ... ... 64, 116, 231
Chinnia Nagudu v. Venkatasubbayya, (1910) M.W.N. 639 ... 195
——— Narayudu v. Haris Chandra Deo, 27 Mad. 23 ... 224
Chinnappa Mudaliar v. Sikka Naikan, 24 Mad. 36 64
Chinna Reddi v. Budda Reddy, 2 L.W. 912 38
Chinnasami Mudali v. Tirumalai Pillai, 25 Mad. 572 ... ... 271, 346
Chinnayya Asari v. Annayappa Mooniappa Asari, 7 M.L.J. 264 ... 155
Chintan Reddi Sanyasi v. Appala Narasimha Raja Garu (1914), M.W.N. 766 191
Chipurapalli Appayya v. Kakarlapudi Ramachandra Raza Bahadur, 27 M.L.J. 490 ... ... 177, 193, 194, 197
Chokkalingam Pillai v. Mayandi Chettiar, 19 Mad. 485 ... 230
Christian v. Tekaitini Narabada Kunwari, 9 C.L.J. 421 121 201, 236, 237
Chunder Nath Bhuttacharjee v. Jaggat Chunder Bhattacharjee, 22 W.R. 337 212
Chunder Nath Misser v. Sirdar Khan, 18 W. R. 218... ... 226
Churiya Kurnum v. Thakaria Chirusthan, 38 Mad. 954 ... 391, 392
Collector of Kistna District, The v. Chinnamarazu, 5 M. H.C. R. 360 154

PAGE.
Collector of Musulipatam, The v. Cavally Venkata Narrainappa, 8 M.I.A. 500 25
——— North Arcot v. Nagi Reddi, 15 Mad. 85 ... 144, 271
——— Ratnagiri v. Antaji Lakshman, 12 Bom. 534 ... 100
——— Salem v. Peer Batcha Saheb, 30 Mad. 106 ... 81
——— „ v. Rangappa, 12 Mad. 404 66
——— Trichinopoly v. Lakkamani, 1 I.A. 282 ... 17, 78, 89
Cutenho v. Sonza, 1 M.H.C.R. 15 226

D

Dadoba v. Krishna, 7 Bom. 34 228
Damodar v. Satyabhama Bai, 31 Bom. 512 129
Dassarathy Hari Chunder Mahapathra v. Rama Krishna Jana, 9 Cal. 26 223
Daulat v. Sakharm Gangadhar, 14 Bom. 392 198
David Nadar v. Manikka Vachaka Desika Gnana Sambanda Pandara Sannadhi, 33 Mad. 65 270
Davis v. Kazee Abdul Hamed, 8 W.R. 55 227
Dean Dyal Singh v. Heera Singh, 2 N.W.P. 338 200
Deo Kuar v. Man Kuar, 17 All. 1 : 21 I.A. 148 ... ... 127, 128
Desai Matilal Mangalji v. Desai Parashotam Nandal, 18 Bom. 92 ... 206
Devaramani Bhogappa v. Pedda Bhinaka Gowd, (1915) M.W.N. 146... 66
Devi Garu v. Lakshmi Suryanarayana Dhatrazu Bahadur Garu, 20 Mad. 256 (P.C.) 235
Dhanukdhari Singh v. Nathima Satu, 11 C.W.N. 848 ... 235
Dharma Kanta Lahiri v. Gabar At Khan, 17 C. L. J. 277 ... 38
Dharm Singh v. Hur Pershad Singh, 12 Cal. 38 39
Dharnipragada v. Kadambari Virrarazu, 21 Mad. 47 ... 172
Dhunput Singh v. Mahomed Kazim Isphahani, 24 Cal. 296 ... 213—214
Dhuramsey Soonderdas v. Ahmed Bhai Habibhoy, 23 Bom. 15 ... 216
Dodha Madharao v. Narayen Gudre, 18 Bom. 110 ... 224
Doorga Kripa Roy v. Sore Janoo Lathak, 18 W.R. 465 ... 223
Dosibai v. Ishvardas Jagjivandas, 15 Bom. 222=18 I. A. 22. 100, 118, 119, 236
——— v. Ishvardas Jagjivandas, 9 Bom. 561 ... 100, 118, 119, 236
Douzelli v. Rajah Tek Narain Singh, 2 W.R. (Act x) 103 ... 210
Dugappa Chetti v. Vithia Purna Tirthaswami, 6 Mad. 263 ... 220
Duli Chand v. Maher Chand Sahoo, 18 W.R. 138 226
Durga Prasad Singh v. Braja Nath Bose, 39 Cal. 696 ... 84—85
——— v. Ragendra Narain Bagchi, 41 Cal. 493, 40 I. A. 223 204, 241
——— v. Rajendra Narain Bagehi, 37 Cal. 293 ... 204,236,241

E

East India Company, The v. Kamachee Boye Saheba, 7 M. I. A. 476 159, 160
——— v. Syed Ally, 7 M.I.A. 555 ... 116, 158, 160
Edathil Itty v. Kapeshon Nayar, 1 M. H. C. R. 122... ... 256
Ellaiya v. Collector of Salem, 3 M. H. C. R. 59 114
Ender Lalla v. Lalla Hari, 7 Bom. H. C. R. (A. C. J.) 111 ... 198
Esubai v. Damodar Ishwardas, 16 Bom. 552 215

PAGE.

F

Fakir Muhammad v. Tirumala Chariar, 1 Mad. 205 ... 5, 11, 23, 24, 62, 78
Fischer v. The Secretary of State, 32 Mad. 141 ... ... 62, 63
———Robert v. The Secretary of State, 22 Mad. 270 : 25 I.A. 16 ... 82
Forbes v. Meer Mahomed Tuquee, 13 M. I. A. 439 ... 162, 163, 165, 166, 168, 240
Forester v. The Secretary of State, I. A. Sup. Vol. 10 ... 159, 160
Foulkes v. Muthuswamy Gowndan, 21 Mad. 503 ... ... 200, 243
———v. Rajaratnam Mudali, 6 M. H. C. R. 175 203
Freeman v. Fairlie, 1 M. I. A. 305 60
Futtesangji Jaswantsingji v. Kullianranji Hekoomutoraiji, 10 Bom. H. C. R. 281 130

G

Gajapat Maharaju Garu v. Sonti Prahlada Binoji Ranto, (1914) M.W.N. 179 ... 157, 162, 166, 167
Ganpati Bhatta v. Ananda Batta, (1911) 1 M. W. N. 233 ... 33
Ganapathy v. Raghoonath, 11 Bom. L. R. 837 90
Ganapati Mudali v. Venkata Lakshminarasayya, (1914) M. W. N. 728 282
Gandoo Mahata v. Nilmonee Singh Dev Bahadur, 1 C. L. J. 526 ... 201
Ganga Bai v. Kalapa Darir Mukriya, 9 Bom. 419 200
——— Kumar Mitter v. Asutosh Goswami, 28 Cal. 863 ... 227
Gangamma v. Bommakka, 33 Mad. 253 ... ... 201, 230
Gangaram v. The Secretary of State, 20 Bom. 798 38
Ganpat Rao v. Ananda Rao, 32 All. 148 ... 102, 128, 131
——— ———v. Ananda Rao, 28 All. 104 ... 102, 128, 131
——— ———Trimback Patwardhan v. Ganesh Baji Bhat, 10 Bom. 112 97, 173
Gavara Ramanna v. Adabala Rattayya, 33 Mad. 235 ... 155
Gaya v. Ramjivan Singh, 8 All. 569 ... ... 200, 243
Gengu Reddi v. Asal Reddi, 1 M.H.C.R. 12 23
Gobind Chund Jutte v. Mun Mohan Jha, 14 W.R. 43 ... 212
———Lal Roy v. Hamendra Narain Roy Chowdhry, 17 Cal. 686 ... 201
———Persad v. Mohanlal, 24 All. 157 38
Godai Molla v. Aminuddi Howludar, 18 C.L.J. 509 214
Gopalan Nair v. Kunhan Menon, 30 Mad. 300 252
Gopal Kishtna v. Lakhiram, 11 C.W.N. 634 228
———Naiken v. Suppa Pillai, 19 M.L.J. 58 214
———Rao Ganesh v. Kishorkalidas, 9 Bom. 527 224
Gopanund Jha v. Lalla Gobind, 12 W.R. 109 ... ... 211, 214
Gopeenath Doss v. Dyanidhee Soondura Mohapattur, 7 W. R. 485 ... 39
Gorakala Kanakayya v. Janardhana Padhi, 36 Mad. 439 ... 177
Goroo Doss Roy v. Issur Chander Bose, 22 W. R. 246 ... 215
Gothandi v. Bhikambhal, 23 Bom. 676 131
Gowra Chandra Gajapati Narayana Deo v. The Secretary of State, 28 Mad. 130 ; 32 I. A. 53 ... ... 134, 133

PAGE.
Goureenath Mookerjee v. Modhoomonee Peshakur, 18 W. R. 445 ... 209
Gouse Moideen v. Muthialu Chettiar, 26 M. L. J. 36 ... 193
Government of Bombay v. Sundarji Savram, 12 Bom. H.C.R. app. 277. 59
Govinda Chandra Sikdar v. Ajinubiddin Sha Biswas, 11 C. L. R. 281. 199
———Padayachi v. Dorasami Padayachi, 9 M. L. T. 409 ... 38
———Parama Guruva v. Dandasi Pradhana, 20 M. L J. 528 ... 177
———Reddi v. Ravi Kesaval Naidu, 29 I. C. 1003... ... 96
Guduri Jagganadham v. Rapaka Ramanna, 7 M. H. C. R. 348 ... 205
Gulabdas Jagjivandas v. The Collector of Surat, 3 Bom. 186 : 6 I. A. 54 ... ... 100, 118, 119, 236
Gunga Gobind Mundul v. The Collector of the Twenty-Four Pergunnahs, 11 M. I. A. 345 ... ... 5, 11, 22
Gunnam Dorayya v. Vadapalli Ayyanna Charyulu, 27 M.L.J. 295 ... 265, 271
Gunnaiyan v. Kamakshi Ayyar, 26 Mad. 339. 112, 157, 160, 170, 171, 172
Gurshidgavda Bin Rudragavda v. Rudragavdai Kom Dyamangavda, 1 Bom. 531 ... ... 126, 128

H

Haidri Begam v. Nathu, 17 All. 45 ... ... 224, 225
Haji Abdul Vindore Jonas v. Haji Harone Esmil, 7 Bom. L.R. ap. 21. 205
Hanumanulu v. The Secretary of State, 36 Mad. 373 : 22 M.L. J. 445 59
Haridas Tanti v. Upendra Narain Shaha, 22 C.L.J. 75 ... 199
Hari Khandu v. Dhondi Natha, 8 Bom. L.R. 96 37
——Narayan Singh Deo v. Sri Ram Chackravarti, 37 Cal. 723 : 37 I.A. 136 ... ... 84, 85
Hari Sadashiva v. Sheik Ajmudin, 11 Bom. 235 ... ... 159, 173
Harro Kumari Chowdhrani v. Purna Chandra Sarbayya, 28 Cal. 188... 214
Hedayet Ali v. Kamalanand Singh, 17 C.L.J. 411 236
Hedlot v. Mahommad Shah, 15 C.L.J. 241 201
Higgins v. Nobin Chunder Sen, 11 C.W.N. 809 235
Himatsingji Joravarasingji v Bhavabhai Kayabhai, 4 Bom. 643 ... 12, 96
Himmut Bahadur v. Sonet Koer, 15 W.R. 549 200
Hotha Virabadrayya v. Revenue Divisional Officer Polavaram, 29 I.C. 8 179
Hummade Behari v. The Secretary of State, 31 Mad. 254 ... 66
Hur Chunder Ghose v. Wooma Soonduree Dassee, 13 W.R. 170 ... 206
Hurish Chunder Koondoo v. Mohini Mohon Mitter, 9 W. R. 582 210
Hurrogobind Raha v. Ramrutno Day, 4 Cal. 67 169
Hurryhur Mookhopadya v. Modhub Chunder Baboo, 14 M.I.A. 152 ... 162
Hussein Khanam v. Ali Husain Khan, 4 A.L.J. 375 ... 235

I

Icharan Singh v. Nilmoney Singh, 35 Cal. 470 228
Idubilly Seyyaddi v. Raja Viswasvara Nissanka, 18 M. L. J. 142 ... 157, 166, 176
Ihtisham Ali v. Sham Sunder, 25 All. 73 131
Imambandi Begum v. Kambeswari Pershad, 14 Cal. 109 ... 221
———v. Kambeswari Pershad, 21 Cal. 1005 214

PAGE.

Imatiaz Begum v. Liakat-un-nissa, 6 All. 630 126
——————v. Liakat-un-Nissa, 7 All. 886 126
Imbi Chetti v. Narayana Menon, 9 M. L. J. 306 254
Imrit Singh v. Koyhlashoo Koer, 11 W. R. 559 206
Innasi Pillai v. Sivagnana Pillai, 19 M. L. J. 347 227
Intizam Fatima v. Ali Baksh, 8 A.L.J. 609 206
Ishar Chandra Mitter v. Raja Ramrangan Chuckerbutty, 2 C.L.J. 125 215, 228
Ishan Chunder Chottopadya v. Shame Charan Dutt, 10 Cal. 41 ... 224
Ismai Kani Rowthen v. Nazarat Sahib, 27 Mad. 211 ... 217
Ismail Ariff v. Mahomed Ghouse, 20 Cal. 834, 26 I.A. 99 ... 37, 38
———Khan Mahomed v. Broughton, 5 C.W.N. 846 ... 220
———v. Jaigun Bibi, 27 Cal. 570 ... ... 199, 217
Iswara Patter v. Karuppai, 3 M. L. J. 255 272
Ittithayeri Nambudri v. Kanvastri Isthri Amma, 14 I. C. 284 ... 220

J

Jaghapathi Razu v. The Secretary of State, 23 M.L J. 51 ... 89, 90
Jagendra Nath Bose v. Baladev Das Marwari, 6 C.L.J. 735 ... 39
Jagganathachaygulu v. Kutumbasayadu, 27 M.L.J. 233 ... 195
Jagganatha Pandiajiar v. Muthiah Pillai, 14 M.L.J. 477 ... 110, 228
—————Pillar v. Subbaroya Pillai, 22 Mad. 340 ... 144
Jagjivandas Jadherdas v. Narayen, 8 Bom. 493 205
Jamnadas v. Lalitaram, 2 Bom. 294 126
Janakee Nath v. Mahomed Ismail, 22 W. R. 285 242
Janaki Nath Chowdhury v. Kali Narain Roy Chowdhury, 37 Cal. 662 199
Jeenab Ali v. Allabuddin, 1 C. W. N. 151 214
Jeeyamba Bai v. The Secretary of State, 23 M. L. J. 687 97, 101, 128, 129
Jewan Doss Sahoo v. Shah Kubeer-Ood-deen, 2 M. I. A. 390 ... 117
Jeypore, Maharaja of v. Rukmini Pattamahadevi Garu, 2 L. W. 483 162, 167
Jiban Krishna Ghosh v. Sripati Charan Day, 8 C.W.N. 665 ... 130, 131
Jiwan Ali Beg v. Basa, 9 All. 108 204
Jiyaji Pratapji Raja v. Balkrishna Mahadev, 17 Bom. 169 ... 131
Jogendra Nath Roy v. Hanmanta Kumari Debi, 14 C.L J. 369 ... 38
Jogeshuri Chowdhrani v. Mahomed Ebrahim, 14 Cal. 33 ... 226
Joykishen Mookerjee v. The Collector of East Burdwan, 10 M. I. A. 16 166
Juggurnath Roy Chowdhury Kishen v. Persad Surmah, 7 W. R. 266. 151
Jugmohan Das v. Pallonjee, 22 Bom. 1 217
Juhoree Lall Sahoo v. Dear, 23 W.R. 399 199
Jyoti Prasad Singh v. Lachipur Coal Company, 38 Cal. 845 84, 85, 104, 201

K

Kadumbine Dossia v. Kasheanath Biswas, 13 W.R. 338 ... 211, 213
Kakarlapalli Pothu Raju, *in re*, 2 L. W. 270 ... ... 178, 193
Kalabhai v. The Secretary of State, 29 Bom. 19 235
Kali v. Tuzle, 9 Cal. 843 220
Kahappa Goundan v. Venkatachella Thevan, 20 Mad. 253 ... 275

	PAGE.
Kali Charan Saha v. Dabruddin Ahmed, 18 I. C. 616 ...	328
Kalidas Laldas v. Bhoji Narain, 16 Bom. 646	198
———Banerji v. Nubeen Chunder Chatterjee, 24 W. R. 91 ...	210
Kali Kishen Tagore v. Golam Ali, 13 Cal. 3	224
———Krishna Tagore v. Golam Ali, 13 Cal. 248	224
———Prasanna Khamalish v. Mathura Nath Sen, 34 Cal. 191 ...	212
Kaliyana Rangappa v. Yuva Rangappa, 28 Mad. 508 : 32 I. A. 261 ...	72
Kallu v. Diwan, 24 All. 487	221
Kally Churn Sahoo v. The Secretary of State, 6 Cal. 725 ...	39
———Dass Ahiri v. Monmohini Dassi, 24 Cal. 440 ...	222
Kamalammal v. The Secretary of State, 8 M.L.T. 171 ...	91
——— v. Raju Naicker, 19 Mad. 308	
Kamala Nayak v. Ranga Rao, 1 M. H. C. R. 24	218, 219
Kamaludin Husen Khan v. Partap Mota, 6 Bom. 224 ...	12, 96
Kammaran Nambiar v. Chindan Nambiar, 18 Mad. 32 ...	225
Kammara Peda Subbayya v. Karashe Chennappa, 28 M. L.J. 303 ...	155,156
Kanaka Kurup v. Govindan, 5 Mad. 310	253,256
Kandakuri Mahalakshmamma v. The Secretary of State, 34 Mad. 295	88,89
Kandappa Asary v. Vengamma Naidu, 37 Mad. 548 ...	155
Kandasami Mudali v. Sadagopa Mudali, 16 I. C. 546... ...	227
Kanduri Venkata Seshayya v. Adam Saib, 25 I. C. 166 ...	206
Kanni v. Achudu, 3 M. H. C. R. 380	250
Kantappa v. Seshappa, 22 Bom. 393	227
Kanthimathinatha Pillai v. Muthuswami Pillai, 37 Mad. 540 ...	187
Kantiarankutti v. Uthotti, 13 Mad. 490	257
Kanti Venkanna v. Chelikani Rama Rao Garu, 26 I. C. 510 ...	177,197
Karia Koundan v. Raghava Reddi, I. L. W. 410	39,66,67
Karim Nensey v. Heinrichs, 25 Bom. 563 : 28 I. A. 198 ...	120
Karnam Naidu v. Latchanna Dora, 23 Mad. 493	155
Karvetnagar, Raja of v. Pandur Govinda Mudaliar, 27 M. L. J. 238	187
Karunakara Menon v. The Secretary of State, 14 Mad. 431 ...	160
——— v. The Secretary of State, (1911) 1 M. W. N. 54.	24,62
Karuppa Thevan v. Vasudeva Sastri, 6 Mad. 148	269
Kasidoss Subraya v. Narayana Reddi, (1915) M. W. N. 209 ...	97,181
Kasturi Gopala Aiyangar v. Anantaram Thivari, 26 Mad. 730 ...	272
Kathijokutti Umma v. Kathussa, 20 M. L. J. 415	224, 225
Kelan v. Manikam, 11 Mad. 330	270, 271
Kelappan v. Madavi, 25 Mad. 452	246
Kellu Eradi v. Pudupalli, 2 M. H. C. R. 161	256
—— Nedungadi v. Krishnan Nair, 26 Mad. 727	253
Kerala Varma Valia Raja v. Ramunni, 33 Mad. 218... ...	395
Kesari Venkata Subbiah v. The Secretary of State, 13 M.L.T. 131 ...	90
Keshava v. Keshava, 2 Mad. 45	252, 253
Keshavrao v. Ganapatrao Nilkanth Nagarkar, 16 Bom. 596 ...	129
Kesiram Narasimhulu v. Narasimhulu Patnaidu, 30 Mad. 126 ...	156
Keval Kuber v. The Taluqdari Settlement Officer, 1 Bom. 586 ...	167
Khaja Mahomed Isa Khan v. Baboo Kisho, 6 Ben. L. R. ap. 44 ...	211

PAGE.
Khayahi v. Hossain Bakhsh, 8 All. 198 205
Kheamamoyee v. Sashee Bhoosun Gangooly, 9 W. R. 94 ... 219
Khitish Chunder v. Bhikar, 19 C. L. J. 448 201
Khuda Bakhsh v. Sheo Din, 8 All. 405 ... ... 205, 242
Kishwar Nath Sahe Dev v. Kali Sankar Sahai, 10 C. W. N. 843 ... 227
Kishore Awasti v. Jadi Nath Basack, 11 C. W. N. 828 ... 211
Kistna Rao v. The Collector of Kistna, 26 M. L. J. 310 : 1 L. W. 191 90
Kittu Hegadthi v. Channamma Shettathi, 30 Mad. 528 ... 230
Kochu Rabia v. Adurahman, 38 Mad. 589 395
Koegler and Co. v. Yule and Co., 14 W.R. 45 (O.C.)... ... 210
Kolakudi Veerana Reddi v. Vasudeva Reddi, 17 M.L.T. 85 ... 137
Komargowda v. Bhimaji, 23 Bom. 602 169
Kombi v. Aundi, 13 Mad. 75 .. ... 126, 128
Kondappa Naik v. Annamalay Chetti, 4 M.H.C.R. 396 ... 80
Konduru Srinivasa Charyulu v. Gattumukkala Venkataraja, 17 M.L. J. 218 206
Kooldeep Narain Singh v. The Government, 14 M.I.A. 247 ... 165
Korapula v. Narayana, 38 Mad. 445 225
Kota Subbayya Gupta v. The Secretary of State, 21 M.L.J. 656 ... 61, 261
Kotel Kanni v. Achuda Pistharodi, 3 M.H.C.R. 380 151
Kotilinga Sethurayer v. Sahasranama Aiyar, 21 M. L. J. 662 ... 261
Kottal Uppi v. Edavalath Tathan Nambudri, 6 M.H.C.R. 258 ... 222, 254
Krishna v. Lakshminarainappa, 15 Mad. 67 221
Krishna Chadaga v. Govinda Adiga, 17 Mad. 404 263
———Charya v. Anthakki, 29 M.L.J. 314 230
———Gobind Dhur v. Mari Charan Dhur, 9 Cal. 367 ... 227
———Govinda Sawadar v. Bewka Behari Saha, 13 C.W.N. 698 ... 215
Krishnaji Sakharam v. Anant, 28 Bom. 241 129
Krishnamma v. Papa, 4 M.H.C.R. 234 ... ... 143, 144
Krishna Nambudri v. The Secretary of State, 19 M.L.J. 347 ... 210
Krishna Menon v. Kesavan, 20 Mad. 305 257
Krishna Rao v. Ghotikar, 8 Bom. 371 38
————Ganesh v. Rangarao, 4 Bom. H.C.R. (A.C.J.) 1 96, 116, 117, 118
Krishnasami Pillai v. Varadaraja Aiyangar, 5 Mad. 345 ... 230, 232
Krishnayya v. The Secretary of State, 19 Mad. 24 87
Krishnayyan v. Venkatachella Mudali, 7 M.H.C.R. 60 ... 63
Kristnasami v. Venkatrama, 13 Mad. 319 272
Kristo Nath Koondoe v. Brown, 14 Cal. 176 ... ... 224, 225
Kristo Soondur Sandyal v. Koomar Chunder Nath Roy, 15 W.R. 230 211
Kshetrabaro Bissoyi v. Sobhanapuram Harikristna Naidu, 33 Mad. 340 155
Kulada Prasad Deghorie v. Kalidas Naick, 20 C.L.J. 212 ... 234, 236
Kullappa Naick v. Ramanuja Chariar, 4 M.H.C.R. 429 ... 66
Kumaradeva Mudali v. Nallathambi Reddi, 1 M.H.C.R. 407 ... 23
Kumarasami Pillai v. Orr, 20 Mad. 145 ... ... 142, 143
Kumara Tirumalai Naik v. Bangaru Tirumalai Sawmi Naick, 21 Mad. 310 ... ... 123, 129
Kumar Rameshar Malia v. Ram Tarak Hazar, 14 C.W.N. 268 ... 241
Kumini Ama v. Parkam Kolusheri, 1 M.H.C.R. 261 ... 252, 256

PAGE.
Kunchu Menon v. Vishnu Barathikal, 28 I.C. 389 ... 392
Kundu v. Impichi, 7 Mad. 442 259
Kunhali v. Kenatha, 3 Mad. 74 256
Kunhanujan v. Angelu, 17 Mad. 296... 218
Kunhayen Haji v. Mayan, 17 Mad. 98 ... ... 208, 216
Kunhi Amma v. Ahmed Haji, 23 Mad. 105 255
———Kathiali Hugi v. Arotoni Goosa, 24 M.L.J. 472 ... 228
———Mayan v. Muhammad, 16 M. L. J. 351 223
Kunhiswo v. Mulloli Chathu, 38 Mad. 86 218
Kunju Behari Seal v. Durga Prosad Singh, 42 Cal. 346 ... 104
Kunju Velan v. Manavickrama Zamorin Raja, 1 M.H.C.R. 113, note. 255
Kuppa v. Doraisami, 6 Mad. 76 151
Kuppu Konan v. Tirugnana Sammandam Pillai, 31 Mad. 461 ... 223
Kuroonakur Mahotee v. Nedadro Chowdry, 14 W.R. 107 ... 200

L

Lachmana v. Geddanna, 1 L. W. 329 173
Lachman Das v. Dip Chand, 2 All. 851 205
Lachmi Narain v. Mukand Singh, 26 All. 617 ... ... 130, 131
Lakham Gowda v. Keshava Annaji, 28 Bom. 305 168
Lakshmanasami Naidu v. Rangamma, 26 Mad. 31 151
Lakshmi v. Chendri, 8 Mad. 72 ... ... 163, 169
Lakshminarasimha Rao v. Sitaramaswami, 24 M.L.J. 288. 12, 96, 97, 98, 195, 196
Lakshmi Narayana v. Zemindar of Vallur, 29 Mad. 42 ... 228
Lakshmayya v. Raja Varadaraja Appa Rao, 23 M. L. J. 624 ... 70
Lakshmipati v. Chalamayya, 30 Mad. 424 172
Lala Singh v. Mir Latiff Hussain, 21 C.L.J. 480 39
Lalit Mohan Ghosh v. Gopal Coal Company, Ltd., 39 Cal. 284 ... 204
Lalita Sundari v. Surnomoyee Dasi, 5 C.W.N. 353 ... 214
Lalit Mohan Singh Roy v. Cherkkur Lal Roy, 24 Cal. 834 : 24 I.A. 76 234
Lalla Gopee Chand v. Shaikliakut, 25 W.R. 211 206
Lal Mahomed v. Kallanus, 11 Cal. 519 223
Lalu Gagal v. Bai Mohan Bibi, 17 Bom. 631 224
Land Mortgage Bank v. Vishnu, 2 Bom. 670 218
Latifa Bibi v. Narayana Chari, 17 M. L. T. 202 ... ... 201, 230
Leelanund Singh v. Mussamut Basheeroonissa, 16 W.R. 102 ... 39
Lekhraj Roy v. Kunhaiya Singh, 3 Cal. 210 : 4 I. A. 223 ... 236, 242
Lekkamani v. Pachaya Naiker, 6 M. H. C. R. 208 ... ...12, 22, 72, 73
Lep Singh Khasia v. Nimar Khasia, 21 Cal. 244 38
Lessees of Sivaganga Zemindari v. Chidambaram Chetti, 38 Mad. 524 186
Lilanand Singh v. Munoranjan Singh, 13 Bom. L.R. 124 : I.A. Sup. Vol. 181 ... ... 168, 243
————v. Monoranjan Singh, 5 W. R. 101 ... 243
Linga Reddi v. Venkata Krishna Rao, 21 M. L. J. 166 ... 191
Lobai Mollah v. Kally Dass Roy, 8 Cal. 238 223

		PAGE.
Lodd Govindoss v. Chinnappa Naidu, 28 M. L. J. 136	...	181
Lopez v. Muddun Mohun Thakur, 14 W. R. 11 (P.C.)	...	214
Lutcheme Doss v. The Secretary of State, 32 Mad. 456	...	90,173

M

Macnaghton v. Lalla Mewa Lall, 3 C. L. R. 285	...	219
Madan Mohan Gossain v. Kumar Rameshwar Malia, 7 C.L J. 615	...	227, 228
Madapathi Venkateswara Rao v. Nandun Rajagopalan, 30 I.C. 927	...	193
Madathapu Ramayya v. The Secretary of State, 27 Mad. 386	...	11, 59
Madavan v. Athi Nangiyar, 15 Mad. 123 ...	...	224
Madhabi Sundari Dassya v. Gagendra Nath Tagore, 9 C.W.N. 111	...	39
Madras Railway Company, The v. The Zemindar of Karvetnagar, 1 I. A. 364	...	63, 85
——————v. The Zemindar of Karvetnagar, 5 M.H. C.R. 139	...	85
Mahadeo Lal v. Kulanand Singh, 19 C.L.J. 241 ...	...	121
Mahadevi v. Vikrama, 14 Mad. 465... ...	...	162, 166, 169
Madhub Chunder Moozoomdar v. Sidhee Nuzier Ali Khan, 8 W.R. 54.		214
Maha Lakshmi v. Lakshmi, 21 M.L.J. 960 ...	...	226
Mahamad Azmat Ali Khan v. Lalli Begum, 8 Cal. 422	...	131
Mahammad Meera Mohideen v. The Secretary of State, 13 M.L.J. 269		62
Mahananda v. Mangala, 31 Cal. 937 ...	...	209
Maharaja Tejchand Bahadur v. Sri Kantha Ghose, 3 M.I A. 261 : 6 W.R. (P.C.) 148	...	201
Maharaval Mohan Sinji Jey Sinji v. The Government of Bombay, 5 Bom. 508 : 8 I. A. 77	...	127
Mahesh Tha v. Manbharan Mia, 5 C.L.J. 522 ...	...	236
Mahewson v. Jado Mahto, 12 C.W.N. 528 ...	...	224
Mahomed v. Ali Koya, 14 Mad. 76, ...	...	253
Mahomed Ali Khan v. Abdul Ganny, 9 Cal. 744 ...	...	39
Mahomed Amanullah Khan v. Badan Singh, 17 Cal. 137	...	38
Mahomed Ameer v. Peryag Singh, 7 Cal. 566 ...	...	222
Mahomed Cassim Bahadur v. Carlier, 5 Mad. 272 ...	...	130, 131
Mahomed Kadir v. Ghulam Mahomed Ali, 28 I.C. 934	...	128, 158, 160
Mahomed Meera Levvai Maracayer v. Ramalingam Pillai, (1911) 1 M.W.N. 84	...	231, 233
Mahomed Moosa v. Taganund Singh, 20 I.A. 715 ...	...	206
Mikal Servai v. Thambuswami, (1914) M.W.N. 784 : 1 L.W. 853	...	38
Mailthi Hengsu v. Soma, 29 M.L.J. 452 ...	...	222
Maloddee Noshyo v. Bullibee Kant Dhur, 13 W.R. 190	...	202
Mana Vikrama v. Gopalan Nair, 30 Mad. 203 ...	...	247, 249
Mangalaswamy v. Subbiah Pillai, 20 M.L.J. 966 ...	...	204, 206
Mangalasamy Thevar v. Sathiappa Pavandan, (1913) M.W.N. 696.	...	278
Mangamma v. Timmapaiya, 3 M.H.C.R. 134 ...	...	60
Mani Chunder v. Boikanta, 29 Cal. 363 ...	...	214
Mannu Lal v. Fazal Imam, 33 All. 580 ...	...	128, 129
Manoharan v. Poranshankar, 6 Bom. 298 ...	...	111

PAGE.
Marapu Tharalu v. Velukulu Nilakanta Behara, 30 Mad. 502 ... 195
Maria Susai Madatiar v. The Secretary of State, 14 M.L.J. 350 ... 240
Markapulli Reddiar v. Thandava Kone, (1914) M.W.N. 798 ... 177
Markkar *in re*, 29 M.L.J. 60 262
Mathar Saheb v. Samabawa Gujranshah, 21 Bom. 195 ... 222
Matilda Fernandez Bai v. Alex. Pinto, 15 I.C 278 35
Mattee Sarayya v. Veppavathi Vaidhinathan, 27 M.L.J. 57 ... 151
Mayandi Chettiar v. Chokkalingam Pillai, 27 Mad. 271: 31 I. A. 83 ... 230, 232, 233
Mayavangari Chumaran v. Nimini Mayuran, 2 M.H.C.R. 109 ... 253
Mazhar Hussain v. Behari Singh, 28 All. 760 39
Mea Matulla v. Bai Pullah, 26 I.C. 619 224
Meenakshi Amma v. The Secretary of State, 26 M.L.J. 385 ... 237
Meera Kasim v. Foulkes, 37 Mad. 432 180
Megh Lal Pandey v. Raj Kumar Thakur, 34 Cal. 358 ... 200
Mekaperuma v. The Collector of Salem, 12 Mad 445 ... 261, 266
Meppatt Kunhamad v. Chathu Nair, 27 Mad. 373 270
Merwanji Mancherji Cama v. Syed Sirdar Alikhan, 23 Bom. 510 ... 213
Midnapore Zemindari Co. Ltd. v. Bamapada Roy, 13 C.L.J. 485 ... 236
——————— v. Sham Lal Mitter, 15 C.W.N. 218. 236
Minakshisundaram Pillai v. Chokkalinga Royer, 15 M.L.J. 10 ... 151
Mirza Shamsher Bahadur v. Kunj Behari Lal, 7 C.L.J. 414 ... 38, 39
Miya Vali Ula v. Sayed Bava Saheb Santi Miya, 22 Bom. 496 ... 131
Mocheeram Majhee v. Bissambhur Roy Chowdhry, 24 W.R. 410 ... 39
Mohanambal v. Davoodsa Rowther, 23 I.C. 859 194
Mohima Chunder Dey Sirkar v. Hurrohar Sircar, 3 Cal. 769 ... 39
———————Mozoomdar v. Mohesh Chunder Neoghi, 16 Cal. 473. 38
Mohim Chandra Moulik v. Sarajubala Gupta, 9 C. L. J. 576 ... 120
Mohini Mohan Roy v. Promoda Nath Roy, 24 Cal. 256 ... 39
Mohum Mahtoo v. Meer Shunsool Hoda, 21 W.R. 5 223
Mohun Lal v. Amratlal, 3 Bom. 174 37
Moidin Kutti Ayissa v. Valia Raja, 2 M.H.C.R. 315... ... 210
Monica Kitheria Saldanha v. Subraya Hebbara, 30 Mad. 410 ... 219
Moni Chandra v. Baikanta, 9 C.W.N. 856 214
Munee Dutt Singh v. Campbell, 12 W.R. 149 ... ... 210, 211
———————v. Campbell, 11 W.R. 278 211
Muniappa Reddi v. Subba Rao, 1 L. W. 585 194
Munoranjan Singh v. Lilanund Singh, 3 W.R. 84 243
Murugesa Chetti v. Chinnathambi Goundan, 24 Mad. 421 ...205, 207, 208
Murugappa Chettiar v. Ramanathan Chettiar, 1 L.W. 881 ... 193
Mussamat Nonshabah Sooltan Begum v. Mussumat Mubeerah Sooltan Beegum, 3 Agra 44 130
Mussamut Ruhmoonissa v. Mussamat Soopun Jan, 18 W.R. 244 ... 223
Mustapha Sahib v. Santha Pillai, 23 Mad. 179 ... 38
Mustijatulla v. Noorzahan, 9 Cal. 808 ... 222
Mutgala Bapayya v. Kosuri Muramulla, 22 M.L.J. 156 ... 155
Muthammal v. The Secretary of State, 27 M.L.J. 529 ... 366
Muthiah Chettiar v. Ramaswami Chettiar, (1913) M.W.N. 618 ... 187
Muthu Chettiar v. Muthuswami Pillai, 30 I. C. 486... ... 181
Muthukumara Chetty v. Anthony Udayan, 38 Mad. 867 ... 187

PAGE.

Muthunayan v. Sinna Samavaiyan, 28 Mad. 526 270
Muthurakko Thevan v. Orr, 21 M.L.J. 615 : 10 M.L.T. 12 ... 37, 215, 216
Muthuswamier v. Srimethanithi Swamiyar, 38 Mad. 356 ... 271
Muthuswamy Pillai v. Jager Hussain Khan, 14 I.C. 215 ... 194
Muthu Vaduganatha Thevar v. Dorasingha Thevar, 3 Mad. 290 : 8 I. A. 99 80
Muthuveera Vandayan v. The Secretary of State, 30 Mad. 270 ... 67
———————v. The Secretary of State, 29 Mad. 461 ... 60, 66, 67
Muthuvelu Pillai v. Aiyasami Naick, (1910) M.W.N. 579 ... 243
Muthuviran Chetty v. Rani Kattama Nachiar, 4 M.H.C.R. 463 ... 80
Muvvula Seetharam Naidu v. Doddi Rami Naidu, 33 Mad. 208 ... 155

N

Naba Kumara Debi v. Behari Lal Sen, 34 Cal. 102 199
Nabo Doorga Dossia v. Dwarka Nath Roy, 24 W.R. 30 ... 200
Nadarsa Rowthen v. Amirtham, 22 M.L. J. 1 139
Nagar Mal v. Ali Ahmad, 10 All. 396 ... ... 126, 128
Nakchedi Bhargal v. Nakchedi Misser, 18 All. 329 223
Nallaya Koundar v. Sadaya Koundar, (1915) M.W.N. 791 ... 186
Nanda Gopal Sinha v. Pores Mani Debi, 17 C.L.J. 464 ... 120
Nanga Bai v. Kalapa Dari Mukrya, 9 Bom. 419 242
Nanjundia v. Venkatasubbiah, 27 M.L.J. 618 ... 128, 129, 172
Naragunty Lutchmeedevamah v. Vengama Naidu, 9 M.I.A. 66 ... 72
Narahari Saha v. Sira Korithan Naidu, (1913) M.W.N. 415 ... 173
Narain Dassappa v. Ali Saiba, 18 Bom. 603 222
Narasayya v. Venkatagiri Raja, 23 Mad. 262 ... ... 133 167, 169
Narasimha Charyalu v. Ramabrahman, 24 M.L.J. 656 ... 97, 195
————Tatha Chariar v. Anantha Bhatta, 4 Mad. 391 ... 151
Narasingh Dyal Sahu v. Ram Narain Singh, 30 Cal. 883 ... 200
Narayana v. Chengammal, 10 Mad. 1 ... ... 86, 171, 172
————Ranga, 15 Mad. 183 151
————Ayyangar v. Orr, 26 Mad. 252 ... ... 78, 97
————Chettiar v. Chokkappa Mudaliar, 26 Mad. 655 ... 270
————Kamti v. Handu Shetty, 15 M.L.J, 210 226
————Naika v. Vasudeva Bhatta, 15 M.L.J. 208 ... 226
————Pillai v. The Secretary of State, 26 M.L.J. 162 ... 377
————Shanboga v. Narayan Naik, 6 Mad. 327 ... 222
————Chetti v. Muthiah Servai, 35 Mad. 63 206
————Raja v. Ramachandra, 26 Mad. 521 265
————Rao v. Dharmachar, 26 Mad. 514 38
Narayanasami Iyer v. Venkatarama Iyer, 29 M.L.J. 607 ... 279
————————Naidu v. Gangadaram, 15 I.C. 784 197
————————v. Kanuru Ramayya, (1914) M.W.N. 713 : 870 ... 192
————————v. Ramakrishnayya, 33 Mad. 499 ... 210
————————v. Sree Raja Vellanki Sreenivasa Jagannatha Rao, 33 Mad. 189 82
————————v. Subramanyam, 29 M.L.J. 478 ... 177, 197
————————v. The Secretary of State, 24 M.L.J. 86 ... 103, 116

PAGE.

Narayanasami Naidu v. Venkayya, (1910) M.W.N. 116, 282 ... 176
——————v. Venkatasubbarayudu, (1911) 1 M.W.N. 233 ... 193
————Padayachi v. Govindasami Padayachi, 29 Mad. 473 ... 270
Narayan Bhat v. Davlata, 15 Bom. 647 198
———Nambudripad v. Krishna Patter, 26 M.L.J. 348 ... 393
———Visajiv v. Lakshmana Bapuji, 10 Bom H.C.R 324 ... 198
Narendra Narayan Rai v. Bishun Chandra Das, 12 Cal. 182 ... 162
Naro Damodar Ghugri v. The Collector of Poona, 6 Bom. 209 ... 127
Nasarvanji Hormsji v. Narayan Trimback, 4 Bom. H.C.R. 125 ... 12, 96
Natesa Gramany v. Venkatarama Reddi, 30 Mad. 510 ... 52
Navaham v. Taverilal, 7 Bom. L.R. 401 199
Nawab Ajajuddin Ali Khan v. The Secretary of State, 28 Mad. 69 ... 37, 103
———Bahadur of Murshidabad v. Gopi Nath Mandal, 13 C.L.J. 625... 39
Neelakantan Nambudripad v. Ananta Krishna Ayyar, 30 Mad. 61 ... 254, 256
Nellaya Variyath Silpani v. Ashtamurthi Nambudri, 3 Mad. 382 ... 251
Neman Chandra Bose v. Mahomed Basir, 9 C.L.J. 475 ... 199, 235
Newaj Bandopadya v. Kali Prosonna Ghose, 6 Cal. 543 ... 162
Nil Madhab Sikdar v. Narotam Sikdar, 17 Cal. 826 ... 200, 222
Nilmoney Singh v. Backranath Singh, 9 I. A. 104 162
——————v. The Government, 18 W. R. 321 ... 162, 165, 166, 167
——————v. The Government, 6 W. R. 121 ... ... 162, 166
Nilratnan Mandal v. Ismail Khan Mahomed, 32 Cal. 51 : 31 I.A. 149. 199
Nisachand Gaita v. Kanchiram Bagani, 26 Cal. 579 ... 38
Nityahari Roy v. Dunne, 18 Cal. 652 234
Nizammuddin v. Mamtazuddin, 28 Cal. 135 224
Nowaghur Coal Co. Ltd. The v. Sashi Bhushan Ray, 19 C.W.N. 375. 84, 85, 104
Nuddyarchand Shaha v. Meajun, 10 Cal. 820 ... ... 215, 216
Nurjahan Begam v. Faghpur Mirza, 3 A.L.J. 64 (P.C.) ... 235
Nursing Deb v. Roy Koylasnath, 9 M.I.A. 55 ... ... 120, 121
Nynappa Servai v. The Secretary of State, (1910) M.W.N. 322 ... 261
——————v. Veeran, 32 Mad. 423 ... ... 63, 64

O

Obai Goundan v. Ramalinga Ayyar, 22 Mad. 217 204
Obhoya Charan v. Kailash Chander, 14 Cal. 751 221
Orr v. Mrithiyanja Gurukkal, 24 Mad. 65 223
——v. Neelamegam Pillai, 18 Mad. 395 143

P

Padmanabhayya v. Ranga, 34 Mad. 161 225
Pahlwan Singh v. Rama Bharose, 27 All. 169 38
Paidal Kiduri v. Parekel Imbichunni Kidaru, 1 M.H.C.R. 13 ... 224
Pakkiam Pillai v. Seetharama Vadiar, 14 M.L.J. 184 ... 151
Palamalai Padayachi v. Shunmuga Asari, 17 Mad. 302 ... 154

PAGE.

Palaniandi Malavarayan v. Vadamalai Oodayan, 2 L.W. 723 ... 198
Palanippa Chetti v. Periakaruppan Chetti, 17 Mad. 262 ... 204
Panchanadayyan v. Nilakantayyan, 7 Mad. 191 129
Papi Reddi v. Peda Venkata Charyulu, 27 M.L.J. 567 ... 195
Parameshri v. Vittappa Shanboga, 26 Mad. 157 222
Parankusa Zatindra Mahadesikaswami v. Subramania Pillai, 26 I.C. 117 106
Parasurama Goundan v. Lodd Govindass Krishna Dass, 16 I. C. 903, 193
Parbhudas Rayaji v. Motiram Kalyandas, Bom. 203 ... 126, 127
Parbutty Bewah v. Woomatare Dabee, 14 Ben. L. R. 20 ... 217
Parlakimedi, Raja of v. The Secretary of State, 28 Mad. 180 : 32 I. A. 53, 239
Parmeswar Pertab Singh v. Padmanand Singh, 15 Cal. 342 ... 243
Parshotam Vishnu v. Nana Prayag, 18 Bom. 101 204
Parthasarady Appa Rao Bahadur v. The Secretary of State, 38 Mad. 620 ... ... 79, 162, 163, 165, 166, 167
Paya Matathil Appu v. Kovamel Amina, 19 Mad. 161 ... 245
Peddi Reddi v. Receiver, Nidadavole Estate, 18 M. L. T. 171 ... 182
Pemmaraja Venkiah v. The Secretary of State, (1910) M. W. N. 456... 241, 242
Pemraj Bhavaniram v. Narayan Shevram Khisti, 6 Bom. 215 ... 38
Peria Amma v. Moothoram, 36 Mad. 410 395
Peria Kovil Kalavi Appan v. Pulliah Chetty 1 In. Ju. 164 ... 128
Periakuruppan v. Subramanian, 31 Mad. 261 224
Periaroyalu Reddi v. Royalu Reddi, 18 Mad. 434 ... ... 66, 67
Periathambi Goundan v. Peria Goundan, 23 M. L. J. 593 ... 66
Perraju Garu v. Subharayudu, (1911) 2 M. W. N. 251 ... 187
Phatma Bi v. Haji Abdulla, 26 M. L. J. 115 150
Pichuvayyan v. Vilakkudayan, 21 Mad. 134 155
Pitchakutti Chetti v. Kamala Nayakkan, 1 M. H. C. R. 153 ... 209
———— v. Ponnamma Natchiar, 1 M. H. C. R. 148 ... 79
Pittapur, Raja of v. Anappindi Siva Ramayya, 18 I. C. 534 ... 177
Pittapuram, Raja of v. Venkata Subba Rao, (1915) M. W. N. 813 ... 186, 187
Pramathan Tupen Nambudripad v. Mudatil Ramen, 1 M. H. C. R. 296 ... ... 254, 255
Prankrishna Day v. Biswanbhan Sen, 2 Ben. L. R. (A. C.) 207 ... 210
Pratap Narain Deo v. Harbar Singh, 36 Cal. 927 224
Prem Sukh Das v. Bhupia, 2 All. 517 221
Ponnusami Padayachi v. Karuppadayan, 38 Mad. 843 ... 190, 195, 196
Ponnuswamy Thevar v. Collector of Madura, 3 M. H. C. R. 35, ... 80
———— v. The Collector of Madura, 5 M. H. C. R. 6 ... 63
President, District Board, Tanjore v. Muthuveera Ambalagaran, 24 I. C. 722 181
Prince Mahomed Buktyar Shah v. Rani Dhojamani, 2 C. L. J. 20 ... 120, 121, 207
Prohlad Toer v. Kedar Nath Bose, 25 Cal. 302 215
Promotho Nath v. Kali Prasanna, 28 Cal. 744 ... ... 209, 220
————Kumar v. Nilmani Kumar, 14 C. L. J. 38 ... 236
————Roy v. Sorigobind Chowdhry, 32 Cal. 648 ... 199
Prosunno Coomaree Debee v. Saiku Rutton Behary, 3 Cal. 696 ... 199
Protab Narain Mookerjee v. Biraj Dossee, 19 C. L. J. 77 ... 224, 228

PAGE.

Puchakayla Jagganaikulu v. Manager, Nindigam Estate, (1914) M. W. N. 239 235
Pullanapally Sankaran Nambudri v. Vittil Thalakat Mahomad, 28 Mad. 505 ... ... 24, 62
Pumpatta Venkata v. Kuntamina, 25 I. C. 704 246
Puranchunder Mookerjee v. Protap Narain Paul, 2 W. R. 120 ... 37
Purmanandas Jeewandas, *In re*, 7 Bom. 109 201
————v. Jiwandas Dharsey Vriji, 10 Bom. 101 ... 205
Purannath Shaha v. Madhu Khulu, 13 Cal. 96 224
Pusa Mal v. Makdum Baksh, 31 All. 514 227
Purshottam Bapu v. Dattatraya Rajagi, 10 Bom. 669 ... 224

Q

Queen Emperor v. Ramasami, 16 Mad. 364 262

R

Radha Kishen v. O'Flaherty, 12 W. R. 145 210
Radha Persad Singh v. Budhu Dashad, 22 Cal. 938... 162, 165, 167, 168, 169
Radha Singh Roy v. Inglis, 7 C. L. J. 367 39
Raghave Charlu v. The Secretary of State, (1915) M. W. N. 271 ... 230
Raghava Naidu v. Muthiyalu Naidu, 28 M.L.J. 301... ... 181
Raghojiro Saheb v. Lakshmanrao Saheb, 36 Bom. 639 : 39 I. A. 202 ... ... 95,96, 100, 119, 236
Raghunatha Rao v. Vellamoonji Gounden, 27 M.L.J. 597 ... 187
Raghunatha Savant v. Babu Lakshman Tandel, 2 Bom L. R. 13 ... 199
Rai Charan Shar Majumdar v. The Administrator General of Bengal, 9 C. L. J. 578 214
Rai Kumar Roy v. Gobind Chunder Roy, 19 Cal. 660 ... 39
Rajagopalacharyulu v. The Secretary of State, (1913) M. W. N. 937... 89
Rajagopala Iyengar v. The Collector of Chingleput, 7 M. H. C. R, 98 ... ... 23, 24, 62
Raja Goundan v. Raja Goundan, 17 Mad. 134 272
Rajaram v. Narasinga, 15 Mad. 199 ... ... 200, 243
————v. Nunchund, 5 Bom. L.R. 225 37
Rajlakar v. Narayanbhat, 3 Bom. H.C.R. (A.C.J.) 63 ... 237
Raju Balu v. Krishnarao, 2 Bom. 273 205
Rajya v. Balakrishna Gangadhar, 29 Bom. 415 ... ... 96, 97, 101
Rama v. Subba, 12 Mad. 98 ...12, 96, 97, 102, 128, 129, 170
Ramabai Saheb Patwarden v. Baboji, 15 Bom. 704 242
Ramachandra v. Narayanaswami, 16 Mad. 333 63,64
————v. Pitchaikanni, 7 Mad. 434 271
————v. Venkatarav, 6 Bom. 598 ... 96, 97, 101, 118, 119
————Appa Rao v. The Secretary of State, 35 Mad. 197 ... 91
————Goswami v. Jagendra Nath Banerjee, 4 C.L.J. 399 ... 120
————Narayan v. Narayan Mahadev, 11 Bom. 216 ... 37, 38

PAGE.

Ramacharan Chowdhry v. The Administrator General of Bengal, 6 C. L.J. 272 228
Rama Chetty v. Arunachallam Chettiar, 18 M.L.T. 349 ... 184
Rama Iyengar v. Jagganatha Pandiajaar, 38 Mad. 155 ... 110, 174
Ramakrishna Mallay v. Bapuraya, 23 M.L.J. 715 225
Ramalinga v. Samiappa, 13 Mad. 15 218
Raman v. Chandan, 15 Mad. 219 271
Raman v. Pazhiyot Mankal Karnavan, 28 M.L.J. 184 ... 392
Ramaswamy Iyer v. The Secretary of State, (1915) M.W.N. 154 ... 370
Ramnad, Raja of v. Sundara Pandia Thevar, 27 M.L.J. 694 ... 120
Ramanathan v. Zamindar of Ramnad, 16 Mad. 467 ... 223
——Chetty v. Pullikatti Servai, 21 M.L.J. 288 ... 227
Raman Nair v. Kunhi Kolandai Musaliar, (1915) M.W.N. 793 ... 253,254
——v. Vasudeva Nambudripad, 27 Mad. 26 ... 253,254
——v. Kandapuni Nayar, 1 M.H.C.R. 445 253
—— Naidu v. Bhasuari Sanyasi, 26 Mad. 638 272
Rama Odayan v. Subramania Aiyar, 31 Mad. 171 64
——Rao v. The Secretary of State, (1912) M.W.N. 542 ... 161
——v. The Secretary of State, 33 Mad. 1 24
——v. The Secretary of State, 1 L.W. 339 : (1914) M.W.N. 388. 59, 65
——v. The Secretary of State, (1913) M.W.N. 639 ... 79, 161
——Ratani Chuckerbutty v. Inaneesh Chandra Bhatta Charya, 12 C.W.N. 675 204
Ramasami Chettiar v. Khathan Chettiar, 28 I.C. 915 ... 233
Ramashar Koer v. Gobardan Lal, 7 C.L.J. 202 120
Ramasundaram Pillai v. Savundarathammal, (1914) M.W.N. 919 : 1 L.W. 900 151
Ramaswamy Iyer v. Tirupathi Naik, 27 Mad. 43 ... ... 204, 205
——Naik v. Thangammal, 26 Mad. 488 227
Ramayya v. Krishnaswami, 23 Mad. 114 242
Ram Coomar Singh v. Krishnarao, 9 Cal. 68 206
Rameshar Bakhsh Singh v. Arjun Singh, 23 All. 194 : 28 I.A. 1 ... 120, 237
Rameshwar Koer v. Gobardan Lal, 7 C.L.J. 202 228
——Malia v. Ram Nath Battacharjee, 33 Cal. 462 ... 201
Ramgati Mohurer v. Poran Huri Seal, 3 C.L.J. 201 224
Ram Moni Dasi v. Ram Gopal Saha, 12 C.W.N. 942 ... 234
——Nursing Chuckerbutty v. Dwarkanatha Gangooly, 23 W.R. 10 ... 232
——Saran Lal v. Ram Narayan Singh, 42 Cal. 305 118
Ramunni v. Kerala Varma Raja, 15 Mad. 166 221
Rander Purayil Kunhisar v. Neroth Kunhi Karnan, 32 Mad. 1 ... 395
Rangaramanuja Chariar v. Srinivasa Iyengar, 26 M.L.J. 397 ... 182
Rangaswami Ayyangar v. The District Board of Tanjore, 21 M.L.J. 728. 177
——Reddi v. Gyana Sambanda Pandara Sannadhi, 22 Mad. 264. 233
Rango Lall Lohea v. Wilson, 26 Cal. 204 199
——Mundul v Abdull Gaffoor, 4 Cal. 314 228
Raniganj Coal Association v. Judoonath, 19 Cal. 489 ... 208
Raran v. Chekkuti, 25 I.C. 623 393
Rash Mohinee v. Nagar Chandrapan Chaudhuri, 27 I.C. 265 ... 212

PAGE.

Ratnasabapathi v. Venkatachallam, 14 Mad. 171 205
Ravji Narayan Mandlik v. Dadaji Bapji Desai, 1 Bom. 523 ... 12, 96, 101, 102, 103, 126, 128
Ravutha Koundan v. Muthu Koundan, 13 Mad. 41 154
Reference under The Madras Forest Act, 12 Mad. 203 ... 61
Rohinee Debee v. Shib Chunder Chatterjee, 15 W. R. 558 ... 204
Rung Lall Misser v. Raghoobur Singh, 9 W. R. 169... ... 37
——— Singh v. Lalla Roodur Pershad, 17 W. R. 386 ... 212
Runjeet Ram Panday v. Goberdhun Ram Pandey, 20 W. R. 25 ... 37, 39
Russiklall Madduck v. Lokenath Kurmoka, 5 Cal. 688 ... 217

S

Sabathy Chetty v. Rengappa Naiken, 26 Mad. 495 272
Sakkaji Rao v. Latchmana Goundan, 2 Mad. 149 52
Sakki Reddi Appalasamy v. P. Venkatasami Naidu, (1912) M.W.N. 918 204
Salemma v. Latchmana Reddi, 21 Mad. 100 172
Salur Zemindar v. Pedda Pakir Rajna, 4 Mad. 371 120
Saminathaiyan v. Saminathiyan, 4 M. H. C. R. 153... ... 46
Saminatha Iyer v. Marimuthu, 14 I. C. 689 139
Sangila v. Maruthamathu, 20 M. L. J. 131 227
Sankaralingam Moopanar v. Subramania Pillai, 29 M. L. J. 514 ... 184
Sankaran v. Periasami, 13 Mad. 467... 228
——— Mussad v. Mokkath Ussain Haji, 30 Mad. 383 ... 257
——— Nair v. Kochappa Menon, 29 I. C. 427 248
Sankarappa Naiken v. The Secretary of State, 20 M. L. J. 977 ... 272
Sankaranaranappaya v. The Secretary of State, (1911) 1 M. W. N. 91. 35
Sankaravadivelu Pillay v. The Secretary of State, 28 Mad. 72 ... 62, 63, 64
Sanyasi Naidu v. Agnihotram Venkatachariyulu, 26 M. L. J. 258 ... 194
——— Razu v. Zemindar of Salur, 7 Mad. 268 ... ...162, 166, 169
Sappani Asari v. The Collector of Coimbatore, 26 Mad. 742 ... 65, 66, 67
Sarat Sundari v. Bhaba Pershad, 13 Cal. 101 227
Sarbananda Basu v. Pran Sunkar Roy Chowdhuri, 15 Cal. 527 ... 212
Saroda Prosad Bhattacharjee v. Mammothar Nath Mitter, 19 C.W. N. 870 214
Saroda Soondaree v. Hazu Mahomed, 5 W.R. (Act X) 78 ... 221
Sartaj Kuari v. Deoraj Kuari, 10 All. 272 : 15 I.A. 51 ... 83
Sarvarayudu v. Venkatarayudu, 38 Mad. 459 189
Sasi Bhushun Raha v. Tura Lal Singh Deo Bahadur, 22 Cal. 494 ... 218
Satyanarayana Appalarazu v. Narasamma, 31 Mad. 526 ... 146
Satyendra Nath Bose v. Anil Chandra Ghosh, 14 C.W.N. 65 ... 206
Satyesh Chunder Sirkar v. Dunput Singh, 24 Cal. 20 ... 204
Savadamuthu Asari v. Revd. Mesquita, (1914) M.W.N. 67 ... 199
Saya v. Lam Jiwan Singh, 8 All. 569 242
Secretary of State, The v. Ambalavana Pandara Sannadhi, 34 Mad. 366. 88, 90
——— v. Ashtamurthi, 13 Mad. 89 ... 24, 25, 36, 62
——— v. Bavotti Haji, 15 Mad. 315 ... 25
——— v. Bhanamurthy, 24 M.L.J. 538 ... 161

PAGE.

Secretary of State, The v. Bhundeppa, 32 Mad. 300 66
——————v. Forbes, 16 C.L.J. 217 ... ... 200, 235
——————v. Jamnadas, 6 Bom. 737 126
——————v. Janakiramayya, 37 Mad. 322 ... 63, 87, 88
——————v. Janakiramayya, 29 M.L.J. 389 87, 88, 89, 100, 237, 374
——————v. Kadirikutty, 13 Mad. 369 24
——————v. Kalika Prosad, 15 C.L.J. 281 ... 39
——————v. Kasturi Reddi, 26 Mad. 268 60, 64, 65, 66, 67, 173
——————v. Kemchand Jeychand, 4 Bom. 432 ... 130
——————v. Krishnama Chariar, 1 L.W. 225 ... 66
——————v. Krishnamoni Gupta, 29 Cal. 518 : 29 I.A. 104. 39
——————v. Krishnayya, 28 Mad. 257 ... ...20, 25, 32, 35
——————v. Luchmeswar Singh, 16 Cal, 223 : 16 I.A. 66. 198
——————v. Maharaja of Bobbili, 31 M.L.J. 163 ... 88, 89, 374
——————v. Muthu Veeran Reddi, 20 M.L.J. 869 ... 63, 64
——————v. Narayana, 8 Mad. 130 265
——————v. Narayanasami Pillai, 34 Mad. 151 ... 363
——————v. Nunja, 5 Mad. 163 ... ... 24, 62
——————v. Pisipati Sankarayya, 34 Mad. 493 ... 265, 271
——————v. Raghunatha Tathachariar, 38 Mad. 108 ... 103
——————v. Rajah Goundar, 22 Mad. 5 268
——————v. Raja of Pittapur, (1913) M.W.N. 478 ... 79, 161
——————v. Ramanuja Jeer Swamigal, (1915) M.W.N. 636 90
——————v. Ram Ugrah Singh, 7 All. 140 ... 59
——————v. Robert Fischer, 26 Mad. 389 ... 82
——————v. Sivasubramania Thevar, 15 Mad. 101 : 18 I. A. 149 ... 238
——————v. Srinivasa Chariar, 15 M.L.T. 275 ... 104, 173
——————v. Subbarayudu, 23 M.L.J. 728 ... 97, 128
——————v. Swami Naratheswarar, 34 Mad. 21 ... 87, 88, 90
——————v. Venkatapathi Razu, 23 M.L.J. 746 ... 59
——————v. Vira Rayan, 9 Mad. 175 ... ... 5, 25, 36
——————v. Vydia Pillai, 17 M. 193 127
——————for Foreign Affairs v. Charlesworth Pilling and Co. 26 Bom. 1 ... 217
Seetharamaraju v. Bayyamma Pantulu, 17 Mad. 275 ... 204
Seetharamayya v. Venkataraju, 18 Mad. 420 143
Segu Rowther v. Alagappa Chetti, 26 M.L.J. 269 182
Sellaya v. Viraya, 10 Mad. 62 272
Sengoda Goundan v. Raju Goundan, 36 Mad. 308 : 22 M.L.J. 201 ... 62
Sennayan Chetty v. Sinnappa Servai, 20 M.L.J. 654 ... 151
Seshagiri v. Pitchu, 11 Mad. 452 260
Seshagiri Iyer v. Tirumalai Ambalam, 17 I.C. 481 106
Seshama v. Sankara, 12 Mad. 1 363
Seshamma Shettati v. Chickaya Hegade, 25 Mad. 507 ... 64, 227
Sethumathava Chariar v. The Secretary of State, 1 L.W. 941 ... 90
Shahaboodeen Chowdhry v. Ram Gutty Chuckerbutty, 9 W.R. 555 ... 38
Shaikh Danoollah v. Shaik Amanutollah, 16 W.R. 147 ... 201

PAGE.
Shaik Hussain v. Govardhanadar Parmanandas, 20 Bom. 1 ... 217
Sheeb Chander Mahmeeah v. Brojonath Adityu, 14 W. R. 301 ... 241
Sheikh Rantan v. Kodanga Shupan, 1 M.H.C.R. 112, 113 note ... 254
Shekara v. Raru Nayar, 2 Mad. 193 ... ... 252, 253
Shekari Varma Valia Raja v. Mangalam Amugur, 1 Mad. 57 ... 259
Shekh Sultan Sani v. Sheikh Ajmodin, 17 Bom. 431 : 20 I.A. 50 ... 119
Sheo Pershad Singh v. Kally Dass Singh, 5 Cal. 543 ... 243
Shumbhoolall Girdharilal v. The Collector of Surat, 8 M.I.A. 1 ... 130
Sidick Hagi Hossein v. Bruel and Co. 35 Bom. 333 216
Singam Setti Sangivi Kondaya v. Draupadi Bayamma, 31 Mad. 153. 131
Sitaramarazu v. Ramachandrarazu, 3 Mad. 367 157, 162, 165, 166, 168, 169
Sitaramji v. Jadunath Singh, 24 I. C. 72 235
Sivantha Naiker v. Katti Ranga Chariar, 26 Mad. 371 ... 52
Sivapada Mudali v. Pitty Tyagaraja Mudaliar, 27 M.L.J. 665 ... 177
Sivaramayya v. Muneappa, 30 I.C. 812 ... ... 178, 191
Sivasubramanya v. The Secretary of State, 9 Mad. 285 ...5, 15, 16, 238
Sobhanadri v. Muthu Rangayya, 32 Mad. 532 203
———Appa Rao v. Gopalakrishnamma, 16 Mad. 34 114, 173, 174, 240
——— v. Venkatanarasimha Appa Rao Bahadur, 26 Mad. 403 ... ... 135, 168, 165, 163, 240
Somayya v. Khatya Begam Sahiba, 1 L.W. 286 203
Sonayya Pillai v. Kalemegham, 5 Mad. 130 268
Sonet Koer v. Himmut Bahadur, 1 Cal. 391 : 3 I.A. 92 ... 200
Soodukhina Chowdhrain v. Raj Mohun Bose, 11 W.R. 350 ... 39
Special Appeal No. 139 of 1858 23
———No. 482 of 1860 23
Sreeman Vickraman v. Ananda Patter, 34 Mad. 61 ... 395
Sreeramulu v. Rangayya Appa Rao, 23 M.L.J. 241 ... ... 190, 193
Sreevadhu Yerranna v. Pontiva Kannamma, 21 M.L.J. 962 ... 157
Sridevi v. Krishnan, 21 Mad. 105 131
Srimati Farmai Bibi v. Sheikh Taste Heddal Husain, 12 C.W.N. 587 224
Srimati Matlika Dassi v. Makhan Lal Chowdry, 9 C.W.N. 928 ... 224
Srinath Roy v. Sathyar Karkar Sen, 13 C.L.J. 660 228
Srinivasa Chetti v. Nanjunda Chetti, 4 Mad. 174 198
Srinivasa Iyengar v. Rangaswamy Iyengar, 1 L. W. 858 ... 211, 212
——— v. The Secretary of State, 38 Mad. 92 ... 272
Srinivasa Iyer v. Muthuswamy Pillai, 24 Mad. 246 227
Srinivasa Tatha Chariar v. Rama Ayyar, 17 Mad. 247 ... 260
Srinivasa Varadachary v. Narasinga Pillai, (1911) 1 M.W.N. 208 ... 155
Sripaka Chinna Mahadeva Vazulu v. Mathura Suryaprakasam, 26 M.L.J. 482 150
Sriram Chackravarti v. Hari Narayan Singh Deo Bahadur, 33 Cal. 54 84, 85
Sriramalu v. Jogiragu, 24 M.L.J. 188 228
Subba v. Nagappa, 12 Mad. 353 224
Subba Naidu v. Nagayya, 25 Mad. 424 171
Subba Rao v. Rama Rao, 25 M.L.J. 155 131
Subbarayar v. Asirvatha Upadesayyar, 20 Mad. 494 ... 270
Subbaraya Chetti v. Aiyasami Ayyar, 32 Mad. 86 172

PAGE.

Subbarayudu v. Gangaazu, 11 Mad. 196 ... ... 143, 144
Subbarayalu Naik v. Rama Reddi, 1 M.H.C.R. 141 ... ... 79, 80
Subbayya v. Maddleliah, 17 M.L.J. 469 ... ... 206, 228
Subbraveti Ramiah v. Sundala Ramanna, 33 Mad. 260 ... 228
Subramania v. Somasundara, 15 Mad. 127 142
Subramanian Chetty v. Mahalingaswami Sivan, 19 M.L.J. 275 ... 260
—————v. ————— 33 Mad. 41 ; 19 M. L. J. 627 ... ... 60, 261
Subramanian Chettiar v. Periasami Thevar, 26 M.L.J. 435 .. 278
————— v. The Secretary of State, (1915) M.W.N. 276. 160
Subbraya v. Krishnappa, 12 Mad. 422 223
——— Kamti v. Krishna Kamti, 6 Mad. 159 222
——— Mudali v. Velayuda Chetty, 30 Mad. 153 130
——— Mudaliar v. Rakki, 32 Mad. 140 192
————— v. The Collector of Chingleput, 6 Mad. 803 ... 67
Sundar v. Parbati, 12 All. 51 38
Sundaram Iyer v. Kulathu Iyer, 29 M. L. J. 505 277
Sundarammal v. Yogavana Gurukkal, 38 Mad. 850 ... ... 150, 151
Sundaramurthy Mudali v. Vellanayaki Ammal, 1 M. H. C. R. 465 ... 115, 116
Sundra Pandia Thevan v. Velathiappa Thevan, 26 Mad. 490 ... 155
Sunnud Ali v. Mussamut Kurimoonissa, 9 W. R. 124 ... 39
Suryanarayana v. Appa Rao, 16 Mad. 140 ... ... 174, 240
Suryanarayana v. Potanna, 38 Mad. 608 ... 96, 97, 98, 100, 195
————— Razu v. The Secretary of State, 1 L. W. 662 ... 162, 163, 166
Suttosurum Gopal v. Moheschunder Mitter, 12 M. I. A. 263 ... 200
Syama Charan Nandy v. Abhiran Goswami, 33 Cal. 511 ... 200
Syed Agam Saheb v. Anantanarayana Iyer, 35 Mad. 95 ... 203, 204
Syed Ali Saheb v. The Zemindar of Salur, 3 M. H. C. R. 5 ... 79
Syed Mahomed Isack Mushyack v. Azeezoon Nissa Begam, 4 Mad. 341 128
Syed Mahammad Khan v. Maharajah Ram Narain, 7 C.L.J. 90. ... 237

T

Tadikonda Buchi Virabadrayya v. Sonti Venkanna, 24 M.L.J. 659 : (1913) M.W.N. 782 ... ... 79, 161, 194
Tamaya Bin Aunayya v. Timapa Ganpaya, 7 Bom. 262 ... 222
Tangirala Siranjivi v. Raja Manikya Rao, 27 M.L.J. 179 ... 150, 151
Tahia v. Sadashiv, 7 Bom. 40 228
Tarini Mohun Mozumdar v. Ganga Prosad Chuckerbutty, 14 Cal. 649 212
Tayawa v. Gurshidappa, 25 Bom. 269 ... ... 211, 212, 213
Tepu Mahammad v. Tejayal Mahammad, 19 C.W.N. 772 ... 215
Thakoor Chunder Paramanick, *In the matter of the petition of*, 6 W.R. 229 217
Thakore Fatehsingji v. Dalal, 27 Bom. 575 206
Thakur Ganesh Baksh v. Thakur Harrihar Baksh, 26 All. 299 : 31 I.A. 116 235

PAGE.

Theivu Pandithan v. The Secretary of State, 21 Mad. 433 ... 61
Theyyan Nair v. Zamorin of Calicut, 27 Mad. 202 ... ... 247, 249
Thiagaraja v. Giyana Sambanda Pandara Sannadhi. 11 Mad. 77 ... 198, 232
Thunkunni Achan v. Manchu Nair, 2 L.W. 102 250
Thupian v. Kasim Sait, 17 I.C. 433 392
Thuppan Nambudripad v. Ittichiri Amma, 37 Mad. 373 ... 223
Thurga Ramachandra Rao v. Appayya, 7 Mad. 128 142
Tiraf Saheb v. Esuf Sahib, 30 Mad. 322 203
Tiruchurna Perumal Nadar v. Sanguvien, 3 Mad. 118 ... 228
Tirumalayya Pillai v. Swami Naicker, 18 Mad. 469 270
Tituram Mukerji v. Elias F. Cohlodrirn, 1 C.L.J. 517 ... 121
———— v. Cohen, 33 Cal. 203 : 32 I.A. 185 ... 120, 121, 201
Toppya Pillai v. Peddo Pillai, 5 M.H.C.R. 383 154
Trimback v. Sheikh Gulam Tulani, 12 Bom. L.R. 208 ... 228
———— Rao v. Balvantro, 30 Bom. 101 ... ... 126, 128
Tudoonath v. Kilburn and Co., 9 Cal. 671 221
Tungame Shettati v. Korattie Shettiti 226
Tungmala Mallanna v. Ramaraju, (1914) M.W.N. 345 ... 177, 197
Tulshi Pershad Singh v. Ram Narain Singh, 12 Cal. 117 : 12 I.A. 205. 200, 243

U

Udi Singh v. Kashi Ram, 14 All. 185 214
Udit Narain v. Golab Chand, 27 Cal. 221 39
Ukkandath v. Puliyakot Kunhi Kuttan, 27 I. C. 10 248
Ukker v. Kutti, 15 Mad. 401 257
Uma Sankar Sirkar v. Tarini Chunder Singh, 6 Cal. 571 ... 212
Umrao Singh v. Ramji Das, 36 All. 51 38
Unhamma Devi v. Vaikunta Hegde, 17 Mad. 218 ... ... 224, 225
Unide Rajaha Raja Bommarauze Bahadur v. Pemmasamy Venkatadry, 7 M. I. A. 128 =95, 114, 116, 133, 135, 157, 162, 166, 167, 169
Upendra Krishna Mandal v. Ismail Khan Mahomed, 32 Cal. 41 : 31 I. A. 144 199
Uppu Lakshmi Bhayamma Garu v. Purvis, 2 M. H. C. R, 167 ... 59
Usman Koya v. Koth, 15 M. L. J. 368 223

V

Vadapalli Narasimham v. Seetharamamurthy, 21 Mad. 163 ... 227
Vadisapu Appandora v. Vyricherla Veerabadraju Bahadur, (1911) 2 M. W. N. 406 ... ... 157, 162, 166, 168, 169
Vadrevu Ranganayakamma v. The Secretary of State, 28 M.L J. 297 89, 91
Vaguram v. Rangayyangar, 15 Mad. 125 222
Vaithilingam Pillai v. Kuthiravatta Nair, 501, ... 247, 248
Vajiram Bhagavan v. Ranchordji Gopalji, 16 Bom. 731, ... 128
Vaman Janardhan Joshi v. The Collector of Thana, 6 Bom. H. C. R. (A. C. J.) 191 ... ... 96, 100, 101, 103, 116

PAGE.

Vaman Shripad v. Maki, 4 Bom. 424, ... 242
Vangala Dikshatulu v. Vangale Gavamma, 28 Mad. 13, ... 172
Varadachariar v. Ramudu, 28 M. L. J. 81, ... 180, 181
Varma Valia v. Raja Varma Kunhi Kutty, 1 Mad. 235 : 4 I. A. 76 ... 151
Vasudevan v. Kesavan, 7 Mad. 309, ... 257
——— Nambudripad v. Vala Chattu Achan, 24 Mad. 47, ... 255
Vasudeva Patrudu v. The Zemindar of Salur, 3 M. H. C. R. 15, ... 198
——— Reddi v. Nallapa Reddi, 1 L. W. 296 206
——— Pandit v. The Collector of Puna, 8 Bom. H. C. R. 71 ... 102, 104
Vasudev Sadasiv Modak v. The Collector of Ratnagiri, 2 Bom. 99 : 4 I. A. 119 127
Vedanta v. Kanniappa, 9 Mad. 14, ... 79
Veder v. Nilkanath, 22 Bom. 425, ... 223
Veerabadrararaja Garu v. Ganta Kumari Naidu, 22 M.L.J. 451 ... 187
Veerabadran Achari v. Suppiah Achari, 33 Mad. 488 ... 155
Veeranan v. Karuppayya Pillai, 37 Mad. 49 271
——— Ambalam v. Annasami Ayyar, 21 M.L.J. 845 ... 64
Veerappa Chetty v. Mudali, 26 M.L J. 373 179
Velugoti Muthukrishna Yachendra Bahadur v. Raju Chetty, (1914) M. W. N. 496 189
Venkaji Krishna Nadkarni v. Lakshman Devgi Kandar, 20 Bom. 354, 224
Venkanna v. Receiver, Medur Estate, 1 L.W. 945 186
———Iyer v. The Secretary of State, (1913) M.W.N. 494 ... 261, 266
Venkata v. Chengadu, 12 Mad. 168 272
Venkatachalla Goundan v. Rangaratnam Aiyar. 24 M.L.J. 571 ... 64
———Iyengar v. Chinna Goundan, 12 I.C. 583 ... 39
Venkatagiri, Raja of v. Jayampu Ayyaparedda, 38 Mad. 738 ...175, 176, 396
———v. Mukku Narasayya, Mad. 1 ... ...133, 167, 177
———v. Narayana Reddi, 17 Mad. 456 ... 206
———v. Shaikh Mohodeen, 1 L.W. 592... ... 181
Venkata Kumara Mahipat Surya Rao v. Chellayammigaru, 17 Mad. 150 ... ... 120, 121
——— v. Sreerama Charyulu, (1911) 2 M.W.N. 307 193
Venka Mahalakshmamma v. Ramajogi, 16 Mad. 271 ... 78, 97
Venkatanarasimba v. Suryanarayana, 12 Mad. 188 144
——— Appa Rao v. Subba Reddi, 24 M.L.J. 655 ... 97, 195
———v. Sobhanadri Appa Rao, 29 Mad. 52 : 33 I.A. 46 ... ... 135, 240
——— Naidu v. Dandamudi Kotayya, 20 Mad. 299 ... 5, 11, 16, 21, 22, 24, 62, 78, 96, 97
——— Ramachandra Rao v. Raja Lakshminarasamma Rao, 30 Mad. 266 129
——— Nayudu v. Raja Vekatta Rangayya Appa Rao, (1914) M.W.N. 373 : 1 L.W. 333 79
Venkatanarayana v. Subbarayudu, 9 Mad. 214 ... ... 143, 144
Venkatapathi v. Subramanya, 9 Mad. 457 272
Venkatapayya v. The Collector of Kistna, 12 Mad. 407 ... 87
Venkataramana Bhatta v. Govindaraja, 30 Mad. 403 225

PAGE.

Venkataramiah v. Narayudu, 12 M.L.T. 313 97
Venkata Rangayya v. The Secretary of State, 37 Mad. 355 ... 89
———— Appa Rao v. Appalarazu, 20 M.L.J. 728 ... 76, 79, 163
Venkataratnam v. Varadaraja Appa Rao, 28 M.L.J. 184 ... 189
———— v.————29 M.L.J. 184 ... 190
Venkataratnamma v. Ramanujasami, 2 Mad. 312 143
————v. The Secretary of State, 37 Mad. 364 ... 89, 103
Venkatarayudu v. Venkata Ramayya, 15 Mad. 284 ... 172
Venkatasami Nalken v. Subba Rao, 2 M.H.C.R. 1 ... 46
Venkata Sastrulu v. Sitaramudu, 38 Mad. 891 : 26 M.L.J. 585 16,98,104,195,196
Venkata Surya Mahipati Rame Krishna Rao Bahadur v. The Court of Wards, 22 Mad. 383 : 26 I.A. 83 83
Venkateswara Yettiappa Naiker v. Alagoo Muttu Servaigaran, 8 M.I.A. 327 ... ... 80, 81, 108
Venkayya v. Subbarayalu, 9 Mad. 283 143
Veerappa Chetti v. Mudali, 26 M.L.J. 373 ... ... 179, 191
Vegoti Chengiah v. Putta Ramudu, (1914) M.W.N. 367 ... 98, 196
Venkanna v Receiver, Medur Estate, 1 L.W. 245 ... 186
Venkata v. Rama, 8 Mad. 249 ... ... 143, 149
Venkatanarasimha Appa Rao v. Sobhanadri Appa Rao, 29 Mad. 52: 33 I. A. 46 168
Venkataramana v. Venkatapathi Nayani, 28 M. L. J. 310 ... 200, 243
Venkatasami Chetti v. Suppa Pillai, 33 Mad. 216 205
———— v. ————, 34 Mad. 90 205
Venkatavaragappa v. Thirumalai, 10 Mad. 112 217
Vickraman v. Ananda Pather, 34 Mad. 61 395
Vidyapurna Tirthaswami v. Uggannu, 34 Mad. 231 ... ... 229, 320
Vinjamuri Veera Venkayya v. Srimurthi Veerabadhrudu, 26 I.C. 735 ... ... 177, 197
Virammal v. Kasturi Rangayyangar, 4 Mad. 381 205
Virananda Nadar v. Miyako Rowther, 21 Mad. 109... ... 203
Virappa v. Ramayogi, 2 M.H.C.R. 341 ... ... 173, 174
Vishnu Trimback v. Talia Punt, 1 B.H.C.R. (A. C. J.) 92 ... 173
Visvanadha Rao v. Chinnakolandai Nainar, 1 L.W. 197 ... 97, 197, 199
Vithaldas v. The Secretary of State, 26 Bom. 410 39
Visveswara v. Gorla Budarado, (1910) M.W.N. 436 ... 166, 169
Vithilinga Padayachi v. Vaithilinga Mudali, 15 Mad. 111 ... 211
Vithoba v. Narayan, 11 Bom. 221, note (*b*) 37, 38
Vithu v. Dhondi, 15 Bom. 407 224
Vizianagaram, Raja of v. The Collector of Vizagapatam, 27 M.L.J. 278 82
Vizianagaram Maharaja v. Maheswaram Ramabhadrayya, 15 I.C. 397 177
————v. Sitaramaraju, 19 Mad. 100 ... 136, 240
————v. Suryanarayana, 9 Mad. 307, 13 I.A. 32 ... 80, 240
Vungarala Seshayya v. Tadapalli Subba Rao, 25 I. C. 61 ... 194
Vusachandrakantam v. Vusa Subbararyudu, 1 L.W. 827 ... 151
Vyakunta Bapuji v. The Government of Bombay, 12 Bom. H. C. R. App. 1 ... ... 12, 16, 20, 32, 33, 34, 36, 96, 230
Vyankatraya bin Ramakrishnappa v. Shivarambal, 7 Bom. 256 ... 222

PAGE.
Vyankaji v. Sarjarao Apaji Rao, 16 Bom. 537 126
Vythilingam Pillai v. Kuthiravattah Nair, 29 Mad. 501 248, 247, 249

W

Wajed Ali v. Mussamut Chuntrakutty Koeree, 22 W. R. 542 ... 212
Wali Ahmed Chowdhury v. Tota Meak Chowdhury, 31 Cal. 394 ... 215
Watson and Co. v. Nistarini Gupta, 10 Cal. 544 212
Womesh Chunder Gooptee v. Raj Narain Roy, 10 W. R. 15 ... 227
Woody Aditto Deb v. Mukoond Narain Aditto Baboo, 22 W. R. 225... 119, 120

Y

Yamunabhai v. Dhindi, 5 Bom. L. R. 186 228
Yemani Sitarama Sastrulu v. Gora Ramudu, (1911) 2 M. W. N. 588 173
Yerranna v. Kannamma, 21 M.L.J. 962 ... ... 172, 173
Yerrayya v. Kangali Naidu, 34 Mad. 246 ... ... 96, 97, 195
Yuruva Venkata Reddi v. Maddi Veeranna, 15 M. L. T. 192 ... 206

Z

Zamorin of Calicut v. Sitarama, 7 Mad. 405 260
Zemindar of Bobbili v. Sitaramayya Garu, 3 M. H. C. R. 67 ... 79
———Chellapalli v. Rajalapati Sommayya, 27 M. L. J. 718 ... ... 175, 191, 193, 196
———Pachipenta v. Maharaja of Jeypore, 23 M. L. J. 97 ... 241
———Ramnad v. Ramamany Ammall, 2 Mad. 234 ... 114, 115
———Sivagiri v. Michael, 38 Mad. 629 187
———Vizianagaram v. Suryanarayana Pantulu, 25 Mad. 587 210

LAND TENURES
IN THE
MADRAS PRESIDENCY

CHAPTER I.

ORIGIN AND EXISTENCE OF PRIVATE PROPERTY.

Beginning of Property.

Property in land began when the community emerged from the pastoral or nomadic stage to that of settled agriculture. As long as they lived on the wild fruits and the products of the chase, they could not have had any idea of property in land. Even in the pastoral or nomadic stage, each family cultivated a patch of land just sufficient for its wants, and when it was exhausted, cultivated another patch and so on. This state of things, however, could not continue for ever. Either because they found this shifting cultivation inconvenient, or because the expansion of such cultivation was arrested by contact with another community, while inside the community increase of numbers prevented this indiscriminate cultivation, all communities destined to higher civilisation adopted settled agriculture as their calling, by which each family continued to cultivate the field or fields which it originally cultivated.

The Aryans.

The Aryans, when they came into India, were essentially a race of agriculturists and practised agriculture as their calling. In the hymns of the *Rig Veda*, the earliest of our sacred songs now extant, and in those of the *Atharva Veda*, we find that agriculture was practised by them. They appear to have prepared the land by first ploughing it with a plough provided with iron shares and then sowing it [1], and to have raised barley [2]. The system of irrigation by

[1] *Rig Veda*, IV. 57. 4.5 (*Griffith*, I. 460); *ibid*, X. 101. 3 (*Griffith*, II. 540); *Atharva Veda*, III. 17.1-7 (*Griffith*, I. 106-107); *ibid*, VI.91, 1. (*Griffith* I. 295).

[2] *Atharva Veda*, VI. 91.1 (*Griffith*, I. 295.)

artificial channels was not unknown to them[1]. From the way in which similes were taken from agricultural operations to illustrate results obtained from sacrifices [2], it may be concluded that agriculture was held in high esteem, and the most interesting fact to note is that in those days agriculture was not confined to any particular class. That the Aryans had passed from the nomadic state to settled agriculture may be inferred from their practice of measuring the field with a rod[3]. Though they were essentially agriculturists, their settlement in a hostile country rendered them also a militant race[4]. Their wealth would appear to have consisted in kine and horses [5].

Their settlement in South India.

As regards the settlement of the Aryans, and their influence on the institutions in South India, two theories have been advanced. According to the first and now discredited theory, South India was subject to two invasions at the hands of the Aryans from the North. The first invaders were cultivating Brahmans and herdsmen of the Aryan stock, who were superseded by a second invasion of a more military class of the same race, and the Chera, Chola and Pandyan kings were their descendants. According to the second and now generally accepted theory, South India was never subject to an invasion by force at the hands of the Aryans but was conquered only by peaceful means. Before they came to the south, it was ruled by the Dravidian kings of Chera, Chola and Pandyan lines and the Aryans first came to them as missionaries, or as ministers or commanders of troops and were so able to impress their ideas, manners, customs and laws upon the Dravidian kings and people, so much so that one and all accepted them. The latter theory, however, admits that after the advent of the Aryans, the Dravidian kings and people became Aryanized and adopted the Aryan ideas, manners, customs, and laws. It is worthy of remark that

1. *Rig Veda*, VII. 49, 1-2. (*Griffith*, II. 51.)

2 *Rig Veda*, X. 101. (*Griffith*, II. 540.)

3 *Rig Veda*, I. 110. 5. (*Griffith*, I 143.)

4 *Rig Veda*, X. 101.8. (*Griffith* II. 541.)

5 *Rig Veda* I. 42.8. (*Griffith*, I, 59) *ibid*, VII 72.1 (*Griffith*, II. 71); *ibid* VII. 92.3 (*Griffith*, II. 87).

the races who were then uncivilised and were not brought under Aryan influence, remain in the same state even at the present day.

Manu.

The Aryans being essentially an agricultural race, premium was necessarily given by them to agriculture and nothing would have been more natural than to adopt the simple rule of giving possession of land to the first person who occupied it. Therefore we find it stated in *Manu*[1], "Sages, who knew former times, consider this earth (Prithivi) as the wife of King Prithu; and thus they pronounce cultivated land to be the property of him, who cut away the wood, *or who cleared and tilled it*; and the antelope, of the hunter, who mortally wounded it ". The words "or who cleared and tilled it" are the gloss of *Kulluka Bhatta.* This verse of Manu appears in the Chapter on Judicature and Commercial and Servile class, and is used to illustrate the discussion on filiation that is carried on in the previous verses by comparing the respective claims of the owner of the seed, and the owner of the land in which the seed is sown; and as it is usual with all ancient writers to illustrate the obscure by the well-known, it follows that this ownership in the first occupant was a notion well established then.

Mahomed.

The same view was also expressed by *Mahomed* in respect of waste lands. According to him "Whoever cultivates waste lands does thereby acquire the property of them "[2]; and in the interpretation of this text, Mahomedan jurists differ.

Abu Haneefa.

According to *Abu Haneefa*, the permission of the chief is necessary to give proprietary right to the cultivator of waste lands ; while his two disciples, *Abu Yusoof* and *Imam Mahomed* hold that, in such a case, the cultivator becomes proprietor on the ground that waste lands are "a sort of common goods and become the property of the cultivator in virtue of his being the first possessor in the same manner as in the case of seizing game or gathering firewood" [3]. In respect of thus acquiring possession, the *zimmee i. e.* the infidel and the Mussalman are placed on

Abu Yusoof and Imam Mahomed.

[1] *Institutes of Manu*, Ch. IX. 44 (Grady's edition).

[2] *Hamilton's Hedaya*, IV. Ch. 45, 129.

[3] *Ibid.*

the same footing, though according to *Abu Haneefa*, the consent of the Imam is requisite[1].

Justinian. Blackstone.

Turning for a moment to the other part of the world, it is very significant to find that a similar idea should be expressed by *Justinian*[2], and at a later date by *Blackstone*[3]. According to *Justinian*, " Wild beasts, birds, fish, that is, all animals, which live either in the sea, the air, or on the earth, as soon as they are taken by any one, immediately become by the law of nations the property of the captor ; for natural reason gives to the first occupant that which had no previous owner."

Maine.

The theory of the acquisition of the right of occupancy by virtue of natural law was vigorously attacked by *Sir Henry Sumner Maine*. According to him[4] this theory pre-supposed that the man in a state of nature was actuated by the same motives which guided a man of today living in an advanced state of civilisation to respect another man's property whereas, on the contrary, his right to possession depended on his power to keep it, and overlooked the important fact that it was the community or the family that was the unit of such a society; and the application of the principle of occupancy to land dated from the period when the *Jus Gentium* was becoming the Code of Nature and was the result of a generalisation effected by the jurisconsults of the golden age[5].

Acquisition of title by occupation.

Manu, however, does not base this right on any theory but on the actual practice that had obtained before him as declared by the sages who went before him. Later writers expressly lay down occupation as one of the modes of acquisition of title[6]. It is significant to find that some of the commentators use illustrations similar to those given by *Justinian*. The *Mitakshara*[7] gives us objects of occupation such as water, grass, wood and the like. The *Viramitrodaya* adds those "appertaining to the common tracts such as

Gautama. Mitakshara. Viramitrodaya.

[1] *Hamilton's Hedaya*, IV. Ch. 45, 131.

[2] *Institutes, Lib.* II. Tit. 1 S. 12. *Sander's Justinian*, 95- (8th edition.)

[3] II. 2; *Stephen's Commentaries*, I. 94 (16th edition).

[4] *Ancient Law*, Ch. VIII. 253.

[5] *Ibid.* 247.

[6] *Gautama*, Ch. X. 39 (S.B.E. II. 228.)

[7] *Mitakshara*, Ch. 1. Sec. 1 pl. 13 (*Colebrooke's translation*, 250.)

forests "[1], and the *Saraswati Vilasa*[2], explains 'seizure' to be "the appropriation of water, grass, firewood and other things found in a forest and other places which have not been appropriated by other persons." Saraswati Vilasa.

Judicial decisions in this Presidency have recognised the right of the first occupant to the possession of land under the Hindu law. In *The Secretary of State* v. *Vira Rayan*[3], *Sir Charles Turner C.J.* and *Muthuswamy Ayyar J.* observed: "According to what may be termed the Hindu common law, a right to the possession of land is acquired by the first person who makes a beneficial use of the soil". The interest of the person thus taking possession is not a limited but an absolute one[4]. Judicial decisions.

Possession of land being thus acquired by the first occupant, what is then the right of the Sovereign in it? The ancient lawgivers have laid down most distinctly that he is entitled to a share of the produce of the land taken, it is said, for protecting the life, liberty and property of the people under his charge. As early as the days of the *Rig Veda* we find it stated, "And then may Indra make the clan bring tribute unto thee alone"[5]. *Manu* says that "a king may take of grain an eighth part, a sixth, or a twelfth, according to the difference of the soil, and the labours necessary to cultivate it "[6], and later on says that a military king may levy even a fourth part in times of urgent necessity, as of war or invasion[7]. *Yajnavalkya* says[8], "Protecting his subjects with justice, he receives one-sixth of their merit";—"If being unprotected the subjects commit any sin, the king shares half of it; for he receive taxes [from the subjects]" *Apastamba*,[9] "The king shall make Sovereign's right only to revenue Manu. Yajnavalkya. Apastamba.

[1] Ch. 1 Sec. 13 (*Sarkar's translation* 8.)

[2] *Foulke's translation*, Sec. 466 p. 49. See also *Smriti Chandrika*, Ch. 1, Sec. 27, p. 12 (*Krishnaswamy Iyer's translation.*)

[3] 9 Mad. 175 (179); *Sivasubramanya* v. *The Secretary of State* 9 Mad. 285 (306); *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299 (302); Cf. per *Innes J.* in *Fakir Muhammad* v. *Tirumala Chariar*, 1 Mad. 205.

[4] *Gunga Gobind Mundul* v. *The Collector of the Twenty-four Pergunnahs*, 11 M.I.A. 345 (361).

[5] *Rig Veda*, X. 173·6 (*Griffith*, II. 603).

[6] *Manu*, Ch. VII. 130.

[7] *Ibid.* Ch. X. 118 (S. B. E. XXV. 427).

[8] Ch. I. V. 334, 336, 337 (*Mandlik's edition*, 198).

[9] II, 10· 26· 9· (S.B.E. II. 162.)

Gautama. them collect the lawful taxes (sulka)"; *Gautama*[1], "Cultivators (must) pay to the king a tax (amounting to) one tenth, Baudhayana. one eighth, or one sixth (of the produce)"; *Baudhayana*[2], "Let the king protect the subject receiving the sixth part"; Narada. *Narada*[3], "Both the other customary receipts of a king and what is called the sixth of the produce of the soil, form the royal revenue, the reward (of a king) for the protection of his Vishnu. subjects"; *Vishnu*, "He must take from his subjects as taxes a sixth part of every year of the grain"[4]; :—A sixth part of flesh, honey, clarified butter, herbs, perfumes, flowers, roots, fruits, liquids and condiments, wood, leaves (of the palmyra tree and others), skin, earthen pots, stone vessels, and anything made of split bamboo"[5]. In order to secure the king of the revenue, penalties were imposed for the non-cultivation Protection of revenue. of land. *Manu* says[6], "If (the crops are destroyed by) the husbandman's (own) fault, the fine shall amount to ten times as much as (the king's) share; but the fine (shall be) only half that amount if (the fault lay) with the servants and the farmer had no knowledge of it". Nowhere do we find in the writings of any of the ancient lawgivers any provision empowering the king to sell the land for such default or even to transfer it to another. The latter mode was adopted by the Mahomedan rulers when, as the result of the high taxation levied by them, the cultivators did not find it worthwhile to cultivate their lands. Distraint and sale laws are quite foreign to ancient Hindu law.

Proprietorship of the soil. Then we have to see in what capacity the king is entitled to take this share of the produce. Does he take it as the proprietor of the soil, or merely as the price for the protection he is affording to the life, liberty and property of his subjects, the property in the soil being in the subject? In other words, is the payment made by the subject rent or tax? The discussion of the question is not merely an academi-

[1] Ch. X. v. 24 (S. B. E. II. 227.)

[2] 1· 10· 18· 1· (S. B. E. XIV. 199.

[3] Ch. XVIII. v. 48 (S. B. E. XXXIII. 221.)

[4] Ch. III. v. 22 (S. B. E. VII. 16.)

[5] *Ibid* III. v. 25 (S. B. E. VII. 16.)

[6] Ch. VIII v. 243 (S. B. E. XXV. 297.)

Discussion not merely academical.

cal one and the point of view taken involves most important consequences and cannot be better described than in the words of the late Marquis of Salisbury. "To the modern statesman, the refined distinctions of the economical school are a solid living reality, from which he can as little separate his thoughts as from his mother tongue. To us it may seem indifferent whether we call a payment *revenue* or *rent*, so we get the money ; but it is not indifferent by what name we call it within *his* hearing. If we say that it is *rent*, he will hold the Government in strictness entitled to all that remains after wages and profits have been paid, and he will do what he can to hasten the advent of the day when the State shall no longer be kept by any weak compromises from the enjoyment of its undoubted rights. If we persuade him that it is *revenue*, he will note the vast disproportion of its incidence as compared to that of other taxes, and his efforts will tend to remedy the inequality and to lay upon other classes and interests a more equitable share of the public burden. I prefer the latter tendency to the former. So far as it is possible to change the Indian fiscal system, it is desirable that the cultivator should pay a smaller proportion of the whole national charge. It is not in itself a thrifty policy to draw the mass of revenue from the rural districts, where capital is scarce, sparing the towns where it is often redundant and runs to waste in luxury. The inquiry is exaggerated in the case of India, where so much of the revenue is exported without a direct equivalent"[1].

Authorities on proprietorship of soil.

Eminent authorities are divided on the question of the Sovereign's proprietorship of the soil. This difference of opinion only relates to the Mahomedan and English periods, and so far as the Hindu period is concerned, all are agreed that the ancient Hindu Sovereigns never claimed any right to the proprietorship of the soil[2].

Private Property.

In the *Institutes* of *Manu*, there are passages which, as remarked by *Sir Charles Turner*[3], can only be explained on

[1] Quoted in *Srinivasa Raghava Iyengar's Progress* 105.

[2] *Elphin Hist.* 23-79 ; *Wilks' Hist. of My.* I. 65-123; *Field's Landholding*, 741 ; *Srinivasa Raghava Iyengar's Progress*, 218; *Wilson Hist. of India*, VII. 298 ; *Baden Powell*, L. S. B. I. I. 226-232 ; *Maine Vill, Com.* 104 ; *Baden Powell, Ibid* 207.

[3] *Minute.* 17.

the footing of the existence of private property in the subject. In the case of disputes between two villages, or landholders concerning a boundary, the king is to ascertain its limits[1]; the testimony of the neighbours on every side is considered the best means of decision in deciding the boundary of arable lands, wells, pools, gardens or houses[2]; and the owner of the field is asked to enclose it with a hedge and stop every gap in it[3]. Again the owner of the soil is to have the produce of the seeds sown by another having no property in it[4], unless there is an agreement between them[5]. He is entitled to the produce of the seed conveyed to his land by wind or water[6], and punishment is laid down for trespass through intimidation or ignorance[7].

Manu.

Another Hindu sage, *Jaimini*, clearly negatives the king's right to the proprietorship of the soil[8]. At a certain sacrifice, such as that which is called *Visvajit*, the votary, for whose benefit the ceremony is performed, is enjoined to bestow all his property on the officiating priests. It is asked whether a paramount sovereign shall give all the land, including the pasture ground, highways, and the site of lakes and ponds; an universal monarch the whole earth; and a subordinate prince, the entire province over which he rules? To that question the answer is: the monarch has not property in the earth, nor the subordinate prince in the land. By conquest the kingly power is obtained, and property in house and field which belonged to the enemy. The maxim of the law, that "the King is lord of all excepting Brahmans," concerns his authority for correction of the wicked and protection of the good. His kingly power is for government of the realm and extirpation of wrong; and for that purpose he receives taxes from husbandmen and levies fines from offenders. But right of property is not thereby vested in him; else he would have property in house and land appertaining to the subjects abiding in his dominions. The earth is not the king's, but is common

Jaimini.

[1] *Manu*, Ch. VIII. 245 (S. B. E. XXV. 298.)
[2] *Manu*, Ch.VIII. 262 (*Ibid* 300).
[3] *Manu*, Ch. VIII.239 (*Ibid* 296).
[4] *Manu*, Ch. IX. 49 (*Ibid* 336.)
[5] *Manu*, Ch. IX. 52, 53 (S.B.E. XXV. 336.)
[6] *Manu*, Ch. IX. 54 *Ibid*. 336.)
[7] *Manu*, Ch.VIII. 264 (*ibid*. 301).
[8] *Colebrooke's Essays*, I. 320.

to all beings enjoying the fruits of their own labour. It belongs, says *Jaimini*, to all alike: therefore, although a gift of a piece of ground to an individual takes place, the whole land cannot be given by a monarch, nor a province by a subordiate prince; but houses and fields acquired by purchase and similar means are liable to gift. *Nilakanta* in the *Vyavahara Mayukha*[1] adopts the same view. He says, "In conquest also where there is ownership of the conquered in houses, lands, money and the like, therein only arises the ownership of the conqueror; but where the conquered has a right to taking taxes (only), the conqueror has even the same and no ownership. Therefore it is stated in the sixth book of *Purva Mimamsa*, 'The whole earth cannot be given away by the king of the world; neither the whole) Mandala (dependency) by the ruler of that dependency.' The ownership in each village, field and the like of the whole earth, or the dependency belongs solely to the respective bhumikars or landlords. The ruler has only to take the taxes. Hence in what is now technically called a gift of land, etc., a gift of the soil is not accomplished but only a grant of the allowance (is provided). But in purchase made from the bhumikars or owners of the soil, even ownership in houses and soil accrues."

Nilakanta.

Description of the king.

The king is described in a verse[2] of *Manu*, "as lord paramount of the soil", and in another verse[3], as "the regent of the waters and the lord of the firmament", and the assumption of such titles by him as affecting his right to the soil is well described by *Prof. Wilson* in his *History of India*[4]: "He is not lord of the 'soil,' he is lord of the earth, of the whole earth or kingdom, not of any parcel or allotment of it; he may punish a cultivator for neglect, in order to protect his acknowledged share of the crop; and when he gives away lands and villages, he gives away the share of the revenue. No donee would ever think of following up such a donation by actual occupancy; he would be resisted if he

[1] *Mandlik's Vya. May. and Yajna*, 34.

[2] Ch. VIII. 39 (*Grady's edition.*)

[3] Ch. VII. 7 (*ibid.*)

[4] I. 212, note; See also *Hodgson's Report on Tinnevelly, Fifth Report*, II. 495: *Mirasi papers*, 105.

did. The truth is, that the rights of the king are a theory, an abstraction; poetically and politically speaking, he is the lord, the master, the protector of the earth (Prithivi pati Bhumiswara, Bhumipa), just as he is the lord, the master, the protector of men (Narapati, Nareswara, Nripa). Such is the purport of the common title of a king; but he is no more the actual proprietor of the soil than he is of his subjects; they need not his permission to buy it or sell it, or to give it away, and would be much surprised and grieved if the king or his officers were to buy or sell or give away the ground which they cultivated."

Jagganatha

The only Hindu authority that can be said to recognise in any way the state ownership of the soil is that of a comparatively modern writer, Pandit *Jagganatha Tercapanchanana* of Bengal. In his Digest prepared in 1773 at the suggestion of Sir William Jones, he is said to have stated views incompatible with the existence of private property in land. He cites no ancient texts in support of his views and the Digest reveals an attempt on his part to reconcile the views prevalent in his time with ancient texts, and it is impossible to describe exactly what his views really are. He quotes a passage from *Narasimha Purana*[1]:—" Thrice seven times exterminating the military tribe, Parasurama gave the earth to Kasyapa as a gratuity for the sacrifice of a horse," and adds that "by conquest, the earth became the property of the holy Parasurama; by gift, the property of sage Kasyapa; and committed by him to Kshatriyas for the sake of protection, became their protective property successively held by powerful conquerors, and not by subjects cultivating the soil". He then says that the subject acquires an annual property by payment of land revenue, and that the king may not give the land to anyone else for that year, and that, in the absence of any special agreement, he may turn out any owner from any field, if anyone else offers to pay him higher sum. Later on in his commentary on placitum 13, he admits that the cultivator has subordinate usufructuary property, not a royal property, and quotes *Sri Krishna Tarkalankara* to

[1] *Colebrooke's Digest*, Bk. II. Ch. II. Sec. 1 pl. 12. (I. 306.)

show that there may be, in the same land, property of various kinds vesting in the king, the subject and so forth.[1] Subsequently in commenting on placitum 23, he says that "others hold that the king has no property in the soil, nor power to dispose of the subject's abode, because all have a right in the soil; since the earth was created for the support of living animals, as expressed in *Sri Bhaghavatta*, "The earth which God created for the abode of living creatures:" and because Manu has *only* declared that the subjects shall be protected by the King.[2]

In case of conquests.

In case of conquests also, the king is enjoined to confirm the laws of the conquered[3], and therefore "where there is ownership of the conquered in houses, lands, money or the like, therein only arises the ownership even of the conqueror; but where the conquered has a right to taking taxes (only), the conqueror has even the same, and no ownership[4].

Sovereign's right limited to a share.

Therefore it was observed in *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*[5] that Sovereigns, ancient or modern, did not in India set up any more than a right to a share of the produce raised by the ryots in lands cultivated by them, however much that share varied at different times. The Sovereign's right being thus limited to one-sixth or one-fourth part of the produce, the necessary inference therefore is, as pointed out by *Mountstuart Elphinstone*[6], that there must be another proprietor for the remaining five-sixths or three-fourths, who must obviously have had the greater interest of the two in the whole property. The Sovereign therefore has a title to the revenue or jumma, and by whatever name it is called, the right and title is to the rent substantially; it does not include a right to the possession of the lands, though such a right might arise by forfeiture, or extinction of the ownership[7].

[1] *Colebrooke's* Digest I. 307.

[2] *Ibid*, I. 313.

[3] *Manu*, Ch. VII. v. 203; (S.B. E. XXV. 249) *Yajna*. I. 341-343 (*Mandlik's Vya. May. and Yajn.* 198.)

[4] *Vya. May.* 34 (*Mandlik's edition.*)

[5] 20 Mad. 299 (302); Cf. *Innes J.* in *Fakir Muhammad* v. *Tirumala Chariar*, 1 Mad. 205.

[6] *History of India*. 23 ; per *Bhashyam Ayyangar* J. in *Madathapu Ramayya* v. *The Secretary of State* 27 Mad. 386 (396.)

[7] *Gunda Gobind Mundul* v. *The Collector of the Twenty-Four Pergunnahs*, 11 M. I. A. 345 (362.)

Grant by the Sovereign conveys only his right.

The right of this proprietor cannot be affected by any dealing by the Government with a third person. Therefore a grant by the Sovereign conveyed to the grantee only his interest in the land, namely, the land revenue, and did not interfere with the existing rights in the soil,[1] even though no such reservation was made in the grant.[2] Whenever it was intended to give the grantee the occupant's interest also, it was either purchased and made over to the grantee, or provision was made in the deed of grant providing for such purchase, or the state itself was in possession of it, as in the case of waste land or land relinquished by ryots[3]. Private property is not inconsistent with the payment of land tax to the king, nor with the existence on the soil of persons who have subordinate rights, or of village officers who receive for the services they render a customary dole at the time of the harvest, or a rent free-holding[4].

Early European writers.

The earliest European writers who enunciated the view that the king possessed the proprietary right in the soil, and that there was no such thing as private landed property in India were the ancient historian *Diodorus Siculus*, and geographer *Strabo*. But their view was attacked by *Col. Wilks* in his History of Mysore[5], and his view was accepted by the learned Judges in *Lekkamani* v. *Puchaya Naikar* [6]. As stated already, all authorities are agreed that the ancient Hindu kings never claimed any proprietorship of the soil [7].

Mahomedan invasion of India.

India was twice subject to Mahomedan rule, once under the Turks after the invasion of *Mahomed* of *Ghuznee* in the eleventh century, and once under the Moghuls after

[1] *Elphinstone's History of India* 81; *Munro*, I. 142 (Arbuthnot's Selections); *Wilks' History of Mysore*, I. 82; *Mirasi papers*, 91; *Bheema Shunker* v. *Jamas Jee Shapor-Jee*, 2 M. I. A. 23; *Rama* v. *Subba*, 12 Mad. 98; *Lakshminarasimha Rao* v. *Sitaramaswami*, 24 M. L. J. 288; *Nasarvanji Hormsji* v. *Narayan Trimback*, 4 Bom. H. C. R. (a. c. j.) 125; *Vyakunta Bapuji* v. *The Government of Bombay*. 12 Bom. H. C. R. App. 1; *Bavjinarayan Mandlik* v. *Narayan Trimback*, 1 Bom. 523; *Babaji* v. *Narayan*. 3 Bom. 340; *Desai Himatsingji Joravarasingji* v. *Bhavabhai Kayabhai*, 4 Bom. 643; *Mir Kamaludin Husen Khan* v. *Partap Mota*, 6 Bom. 244 (249-250.)

[2] *Mirasi Papers* 91; *Ravji Narayan Mandlik* v. *Narayan Trimback*, 1 Bom, 523; *Desai Himatsingji Joravarsingji* v. *Bhavabhai Kayabhai*, 4 Bom. 643.

[3] *Tanjore Dt.*, M. 399; *Mirasi papers*, 220.

[4] *Sir Charles Turner's Minute*, 23.

[5] I. 70.

[6] 6 M. H. C. R. 208 (215).

[7] *Ante* p. 7.

the invasion of. *Baber* in the sixteenth century. On each of these occasions the southern part of the peninsula was overrun by the conquerors, though not to the same extent as the more northern provinces. About the year 1300, *Allauddin* formally completed the conquest of the Deccan; and in the year 1347 we find direct Mahomedan authority extending as far south as the Kistna river.

Proprietorship of the soil introduced into India by Mahomedans.

We have then to see how far the Mahomedan law was consistent with the Hindu law, as regards the proprietorship of the Sovereign over the soil. The notion of the proprietary right of the Sovereign in the soil is of Mahomedan origin, which is essentially a feudal idea introduced by the Mahomedans to whom that system was familiar[1]. Their principle was: in case of conquest by force of arms, the Imam may either divide the country among the Mussulmans, or leave it in the hands of the original proprietors exacting from them a capitation tax, called *zizyat*, and imposing a tribute upon their lands, known as *khiraj*. The *ooshr* or tithe can only be imposed upon true believers.[2] This represents the view of *Abu Haneefa* which is mainly followed in India; while other Mahomedan jurists hold that, in all conquered countries, although the inhabitants may be suffered to retain the occupancy of their lands, the property of them is vested in the Sovereign.[3]

Ooshr and khiraj.

According to the Mahomedan law, *ooshr* (tithe) is Zukat or poor's rate on the fruits of the earth, and *khiraj* a peculiar tax imposed on lands of conquered countries whose inhabitants have been left free to the exercise of their own religion[4], and while the former is due only on the actual production of the soil, the latter is due on productive land, whether it yields any produce or not, and being thus more onerous than the *ooshr*, is more appropriate to infidels. *Ooshr* can be levied only on Muslims and not on infidels, and *khiraj* cannot be levied on the former except under peculiar circumstances, and therefore while the lands of a Muslim may be subject to either *ooshr* or

[1] *Field's Landholding*, 419.

[2] *Hamilton's Hedaya*, II. Bk. IX. Ch. IV. 159.

[3] *Wilson's History of India*, VII 297.

[4] *Baillie's Land Tax*, IX.

khiraj, those of the infidel can only be subject to *khiraj*, but no land can be subject to both at the same time[1].

Khiraj not formally levied in India.

In India, however, *khiraj* was never formally levied, though an attempt was made to do so by *Allauddin* in the beginning of the fourteenth century. When the Mahomedan conquerors found that the Hindu kings were in the habit of taking a share of the produce as revenue, they too were content to take it in place of *khiraj* and to impose in addition *zizyat*, a poll tax, on the person of the non-Muslim[2]. This system of taking revenue by a share of the produce was commuted into a money payment by *Sher Khan* and *Selim Khan* and was subsequently carried out with greater precision and correction by *Akbar* and then began the levy of the true *khiraj*[3].

Levy of khiraj did not give Sovereign any property in the soil.

But the imposition of the khiraj did not give the Sovereign any property in the soil. "The land of the Sowad of Irak is the property of its inhabitants. They may alienate it by sale, or dispose of it as they please ; for when the Imam conquers a country by force of arms, if he permit the inhabitants to remain in it, imposing the khiraj on their lands and the zizyat on their lands, the land is the property of the inhabitants, and since it is their property, it is lawful for them to sell it or dispose of it as they choose[4]. To the same effect is the translation from "An extract from the Mahomedan law" of property given in *Wilks' History of Mysore*[5]. "In the book *Khazanatul Rewayah* it is written : 'Tributary land is held in full property by its owner; and so is tithed (or decimated) land : a sale, a gift, or a charitable devise of it is lawful, and it will be inherited like other property. Thus *in the book Mohodeyah*, in a passage quoted from *Almohit* (a work of the lawyer *Mahomed*), lands are held in full property by them, they shall inherit those lands, and shall pay the tribute out of them' and in the book *Alkhanujah* it is written, 'The Sovereign has a right of property in the tribute or rent'; so in the book *Modena Sharhi Baaz* it is written 'A town and the district annexed to it shall

[1] *Baillie's Land Tax, IX.*
[2] *Ibid* XXXIII.
[3] *Ibid.*
[4] Galloway quoted in Baillie on Sale, 153; Baillies Land Tax XIX.
[5] I. 117.

not be sold by the Sovereign, if it pay tribute or rent to the crown, nor shall it be given or inherited, nor shall it belong to the royal domains; for inheritance is annexed to property, and he who has the tribute from the land has no property in the land: hence it is known that *the king has no right to grant the land which pays tribute, but that he may grant the tribute arising from it.*"

Mahomadan and Hindu law not different.

Thus it will be seen that the Mahomedan law of property as applied in India, differed in no way from the Hindu law, and the only effect of the Mahomedan conquest was to raise the land tax so high as to leave the cultivator barely subsistence wages.

Mahomedan practice not different from their theory.

That the Mahomedan practice did not, in any way, differ from their theory will be best seen from the following extract taken from Field's Landholding[1]: "That the ownership of the soil was not in the Sovereign is proved by a variety of arguments. One of these is remarkable, being drawn from the fact that the Emperors purchased land when they wanted it. Aurangazib purchased the purgunnahs of Lundi, Palan, etc., in the vicinity of Delhi. Akbar purchased land for the forts of Akbarabad and Illahabad; Shah Jehan for the fort of Shah Jehanabad; and Alamgir for the fort of Aurangabad and for mosques. When the jagirdars got possession, they paid *malikhana* to the zemindars. There is a native saying that 'the land belongs to the zemindar and the revenue to the king'; and according to Mahomedan law the Sovereign has a right of property in the tribute or revenue: but he, who has tribute from the land has no property in the land."

Internal constitution of villages unaffected by Mahomedan conquest.

The Mahomedan conquest of India was never complete. Whatever may have been their theory or practice, their rule did not alter the internal constitution of the villages and the rights of landed property, except by increasing the tax and diminishing the value of the royts' interest by collecting the revenue by means of farmers [2], and their influence was

[1] 741 footnote (1).

[2] *Srinivasa Raghava Iyengar's Progress*, 221; *Sivasubramanya* v. *The Secretary of State*, 9 Mad. 285 (306).

certainly not felt in the territories of the *Pandian* and *Nayak* rulers [1].

Judicial decisions.

In *Vyakunta Bapuji* v. *The Government of Bombay*, *Westropp, C. J.*, and *West J.* held, after an elaborate consideration of the ancient authorities, that the proprietary right of the Sovereign to the soil derived no warrant from the ancient laws or institutes of the Hindus, and was not recognised by modern lawyers as exclusive of, or incompatible with, individual ownership [2]. The same principle was recognised by *Subramania Ayyar* and *Benson JJ.* in *Venkatanarasimha Naidu* v. *Dandamudi Kotayya* [3]. But in *Venkata Sastrulu* v. *Sitaramudu* [4], there is a dictum of *Seshagiri Ayyar, J.* to the effect that the ownership of the soil vests in the Sovereign, and that it is based on the theory that the ancient Sovereigns of the country had similar right. But his Lordship was dealing not with cultivated, but with waste lands.

The English assumption of proprietorship of the soil.

On the conquest of India by the English, they proceeded on the footing that the proprietorship of the soil belonged to the Crown. Having been brought up amidst the feudal ideas prevalent in England, under which the king is considered the owner of all lands within the realm, and the subject can have no absolute property in the land but only an interest therein, and having witnessed the condition prevalent in disturbed times when they came to India, they concluded that the proprietorship of the soil belonged to the Crown. In the year 1796 the Government of Madras declared that "it is the first feature in all the Governments of India, that the Sovereign, whether he be a Mussulman or a Hindoo is lord of the soil; and hence it is that no alienation of lands from the property of the circar, or rather no possession of land whatever is valid without a written instrument from the superior lord; and this distinction has invariably followed the conquests of all nations who have established themselves in India [5]." How far this statement accords with facts will be seen from what

[1] *Sivasubramanya* v. *The Secretary of State*, 9 Mad. 285 (306.)

[2] 12 Bom. H. C. R. App. 1 (53).

[3] 20 Mad. 299.

[4] 38 Mad. 891: 26 M. L. J. 585 (594).

[5] *Mirasi Papers*, 26.

has already been discussed. In answer to this declaration of the Government, the Board of Revenue at once pointed out that there were hereditary cultivators on lands with the right of making any disposition of them by sale, mortgage or otherwise as long as they paid the Government revenue, and that they only could not make any alienation of them to the exclusion of the royal share of the revenue.[1]

Conferring of proprietary rights on permanent settlement.

Acting on the view that they were the proprietors of the soil, the Government purported to confer proprietary rights in the soil on the zemindars at the time of the permanent settlement. In the preamble to Regulation XXV of 1802 passed for the purpose of carrying out the permanent settlement, it is recited that "it has been usual for the Government to deprive the zemindars, and to appoint persons on its own behalf to the management of the zemindaries, thereby reserving to the ruling Power the implied right and the actual exercise of the proprietary possession of all lands whatever," and section 2 vested the proprietary rights of the soil in the zemindars or other proprietors. Subsequently, it was found out that the Regulation had the effect of interfering with the established rights of ryots, and therefore Regulation IV of 1822 had to be passed, which declared that the provisions of Regulation XXV of 1802 were not intended to interfere with the actual rights of the ryots. In the preamble to Regulation XXXI of 1802 also, it was stated "that the ruling power reserved to itself, and has exercised the actual proprietary right of lands of every description." The effect of these Regulations was considered by the Privy Council in the case of *The Collector of Trichinopoly* v. *Lekkamani* [2], relating to an unsettled palayam. The Government contended in this case that there was no proprietary right in lands not permanently settled. The Privy Council overruled this plea and observed, "Laying out of consideration for the present the words of the preamble, which form no part of the enactment of the Regulation (see Dwarries on Statutes, p. 655), it is

The Collector of Trichinopoly v. *Lekkamani.*

[1] *Mirasi Papers*, 33.
[2] L. R. 1 I. A. 282; 14 Ben. L. R. 115; 21 W. R. 358.

clear that the affirmative words of the 2nd section 'that, in consequence of the assessment the *proprietary right* of the soil shall become vested in the zemindars' etc., did not either give to, or take away from, the former owners of lands not permanently assessed any rights which they then had. It merely vested in all zemindars an hereditary right at a fixed revenue upon the conclusion of the permanent assessment with them. It is a maxim that affirmative words in a statute without any negative, expressed or implied, do not take away an existing right (see Coke's 2nd Institute p. 200; Dwarries on Statutes, p. 637). There are no words declaring that no proprietary right then existed, or should thereafter be deemed to exist, except in Government in any lands not permanently settled; and in their Lordships' opinion it was not the intention of the Legislature to pass such an enactment.

" The words ' proprietor of land,' as used both in the Bengal Code of 1793 and in the Madras Code of 1802 have a technical signification (see the definition in Bengal Regulation VIII of 1793. Sections 5, 6 and 7 ; and Regulation XXVII of 1802, Madras Code, section 2). They refer to ' zemindars, independent talukdars, and others who pay the revenue assessed upon their estates immediately to Government, and the words 'proprietary possession' as used in the recital of Regulation XXV of 1802, must also be read in a similar sense as meaning the possession and rights of a proprietor in the technical sense in which that word is used, *viz.*, the person who pays the revenue immediately to Government. (See Regulation 1. of the Madras Code, sections 14 and 16.)

"There are frequently many valuable terms existing between the zemindar and the ryots, or actual cultivators of the land. If the Regulations XXV and XXXI of 1802 were to be read in the sense contended for on the part of Collector appellant, they would have the effect of vesting in Government, not only all hereditary estates, but all sub-tenures, whether for life or otherwise, and whether created by the native Governments before the territories

came under the Government of the East India Company or not.

"The words of the recital 'the *implied*, right and the *actual* exercise of the *proprietary possession* are, to say the least of them, very ambiguous. But whatever may be the real meaning of those words, the recital clearly was not intended to amount to more than a declaration that it had been usual for Government, in order to enforce an increased revenue, to deprive or dispossess the zemindars, and to take the management of the zemindaries into the hands of their own officers; or, in other words, that they were in the habit of taking khas possession of the zemindaries of those zemindars who neglected to pay any increased amount of revenue assessed upon them.

"A similar course seems to have been adopted in Bengal up to the time of the permanent settlement (See Regulation I of 1793), and to have continued at the time of that settlement, with respect to every zemindar who might decline to engage for the jumma proposed to be permanently settled upon his estate (See Regulation VIII of 1793, section 43, Bengal Code).

"Further, the usage recited was limited to the purpose of obtaining an increased revenue, and it was by means of the usage that the Government was said to have reserved to itself the implied right, etc. The words are '*thereby* reserving to the ruling power the implied right, etc.' The preamble recognised the right of private property when it stated that the then existing mode of administration was injurious '*by diminishing the security of private property*.' It did not assert a right on the part of Government to deprive or dispossess zemindars in their lifetime or their heirs after their deaths, for the purpose of transferring their rights to Government, or to new holders at the will of Government, independent of any considerations connected with the realization of revenue.

"The language of the recital applied as much to zemindars in their lifetime as it did to the heirs of zemindars upon their deaths. If the words were to have the unlimit-

ed construction and effect contended for, the Regulation would have justified Government in depriving or dispossessing the deceased Poligar in his lifetime, and in transfering the zemindari to a new holder to the same extent as it would have justified them in dispossessing his heirs after his death. Such a construction would go far beyond the claim set up by the Collector in the suit, *viz.*, that the deceased zemindar had only a life state which reverted to Government, and was at their absolute disposal after his death; nay, it would do more; it would render every landowner in the Presidency, except those who claimed under a permanent settlement, liable to be dispossessed or deprived of his estate, and to have it transferred to a new holder at the will of Government."

Sir Thomas Munro.

Sir Thomas Munro in his report[1] dated 15-8-1807 said that private landed property never existed in India except on the Malabar coast; and in a minute recorded by him as Governor of Madras in 1824,[2] he said "There is no reason to suppose that private landed property ever, at any time, existed upon the same footing over the greater part of India. From Pulicat to Ganjam, in the Ceded Districts, the Brahmahl and Coimbatore, it seems to have been always, as now, little known, except as inam from the Sovereign. Along the Malabar coast, and above the Western Ghats from Sunda to Wynaad, it seems to have existed from a remote period, as now almost universally, and in the Carnatic, Tanjore, and Madura." By private landed property, *Sir Thomas Munro* evidently meant property having a saleable value[3] and the districts mentioned by him as having no private landed property are those which came first under Mahomedan dominion and where assessment was so high as to make the occupants feel no attachment to the soil.

Government's view.

So far as this Presidency is concerned, the declaration of the Government contained in G. O. dated 21st September, 1882, No. 1008, Revenue, clearly

[1] *Revenue Selections*, I. 95.

[2] *Minutes* (*Arbuthnot's Selections*) I. 238 : *Mirasi Papers* 430.

[3] *The Secretary of State* v. *Krishnayya*, 28 Mad. 257 (276) ; *Vyakunta Bapuji* v. *The Government of Bombay*, 12 Bom. H. C. R. app. 1 (41) : *Bhaskarappa* v. *The Collector of North Canara*, 3 Bom. 452 (524).

expresses its view that it has no proprietary right in the soil.[1] The conclusions drawn by it after full inquiry are (1) that the State cannot, without violating the rules and practice dating from time immemorial, assert in this Presidency an exclusive right to minerals in unoccupied lands, but that it is fully entitled to a share in such products as in any other produce of the land; (2) that subject to the payment of a stated proportion of the produce to meet the necessities of the administration, the proprietary right of the ryot in the soil of his holding is absolute and complete; (3) that he is able to mortgage, sell, devise or otherwise alienate the land; (4) that, on these principles, property has been changing hands from time immemorial, and for the Government to put forward a claim now, which has never been asserted and which does not rest in law, practice or precedent, would undoubtedly raise a feeling of distrust and discontent which would take long to allay; (5) that it would be straining the State's privileges to attach the condition of recognition of any exclusive right to minerals on the terms on which lands may be newly occupied, although in the interests of the general public, it may in particular instances be justifiable to do so, in view to the development of ascertained mineral resources; and (6) that as regards the vast bulk of the land occupied or likely to be occupied for cultivation, such reservation would be absolutely objectless and would only have the effect of creating widespread distrust in the minds of the people."

Relation between Government and ryot.

What is the relation between the Government and the ryot? From what has been said before, the ryot came into existence not under any letting by the Sovereign of the day but independently of him[2] and perhaps at that time the Sovereign had not even come into existence. There is no analogy between the Indian ryot and the English tenant and therefore the relation of landlord and tenant which implies that the latter derives his title from the former does not exist between the Indian ryot and the Govern-

[1] Quoted in *Srinivasa Raghava Iyengar's Progress*, 104.

[2] *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299.

ment.[1] On the other hand, the former is the landlord [2] or at any rate unites in his own person the characters of labourer, farmer and landlord.[3] He divides with Government all the rights of the land. Whatever is not reserved by Government belongs to him. He is not a tenant at will or for a term of years and is not removeable because another offers more.[4] The relationship between them is described in *Srinivasa Raghava Iyengar's Progress of ths Madras Presidency* thus,[5] "Ancient Hindu Law recognised only two beneficial interests in land, *viz.*, (1) that of the Sovereign or his representative, and (2) that of the cultivators holding the land either individually or as members of a joint family or a joint village community. Neither the Sovereign nor the cultivators had unlimited proprietary right or full ownership in the modern sense. The Sovereign's right consisted in his power to collect a share of the produce of the cultivated lands, known by the name of *Melwaram* in the Southern districts of the Presidency; and this *Melwaram* is not rent in the strict signification of the term. The share of the ryots or cultivators is known by the name of *Kudivaram.*" The melwaram and kudiwaram rights are thus the two principal independent interests in land and the one is not derived from the other; all other interests are derived from, or are subordinate to, either the one or the other.[6] The absolute proprietary right in land may be in the person who carries on its cultivation and be evidenced to have come from first occupancy.[7] The relation between the Government and the ryot is one of partnership of which the former is the sleeping partner.[8]

[1] *Munro's Minutes* (Arbuthnot's Selections) I. 284; *Srinivasa Raghava Iyengar's Progress*, 218; *Venkatanarasimha Naidu* v. *Dandamudi Kotayya* 20 Mad. 299; *Cheekati Zemindar* v. *Ranasooru Dhora*, 23 Mad, 318; *Gunga Gobind Mundul* v. *The Collector of the Twenty-Four Purgunnahs*, 11 M.I.A. 362.

[2] *Gunga Gobind Mundul* v. *The Collector of the Twenty-four Purgunnahs*, 11 M.I.A. 362.

[3] *Srinivasa Raghava Iyengar's Progress*, 103.

[4] *Munro's Minutes* (Arbuthnot's Selections) I. 284; *Venkatanarasimha Naidu* v. *Kotayya*, 20 Mad. 299.

[5] 218; *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299.

[6] *Srinivasa Raghava Iyengar's Progress*, 221.

[7] *Lekkamani* v. *Puchaya Naicker*, 6 M.H.C.R. 208.

[8] *Srinivasa Raghava Iyengar's Progress*, 103, 218; *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299.

Remedy against ryots laying waste or making default.

When the ryot lays waste his land or fails to pay the revenue due thereon, can the Government take it from him and transfer it to another? In *Special Appeal* No. 139 of 1858,[1] it was held by the Sudder Court that the land of a ryot, who laid it waste, could not be transferred by the Collector for cultivation to another without giving the ancient occupant an opportunity of cultivating it; and in *Special Appeal* No. 482 of 1860[2], this case was held inapplicable when the land was abandoned and left waste. In *Gengu Reddi* v. *Asal Reddi*[3] where a non-mirasi land was left waste by the ryot from 1851 to 1858, and in *Kumaradeva Mudali* v. *Nallathamby Reddi*[4], where an ordinary ryotwari pattadar left waste his land in 1850 and 1851, it was held that the Revenue authorities were justified in granting the land to another; and it was further held in the latter case that an ordinary ryotwari holder had only an indefeasible right of occupation so long as he paid the Government assessment on the land, and that on his abandoning it and ceasing to make this payment, the Government had the power of granting it to other ryots for purposes of cultivation. The last three cases were treated by *Innes* and *Kernan JJ.* in *Rajagopala Iyengar* v. *The Collector of Chingleput*[5] as proceeding on the footing that the ryots therein had abandoned their lands; but where a mirasidar left waste his lands for a considerable time from 1853, and was in arrears of the assessment due thereon and in consequence, the Revenue authorities in 1866 gave away the lands to another, it was held that his tenancy could only be determined by his resignation or abandonment of the holding or by the course of proceedings laid down in Act II of 1864.[6] In *Fakir Muhammad* v. *Tirumala Chariar*,[7] the plaintiffs, as the mirasidars of a village having a preferential right to obtain waste lands therein, obtained pattas for them in preference to a stranger

[1] M. S. D. (1859) 21.
[2] M. S. D. (1861) 112.
[3] 1 M. H. C. R. 12,
[4] 1 M. M. C. R. 407.
[5] 7 M. H. C. R. 98.
[6] *Ibid.*
[7] 1 Mad. 205.

who made applications therefor, but did not cultivate them nor paid the kist in respect therefor. When the lands were put up for sale for arrears of kist, they bought them in, but the Collector refused to issue them pattas, cancelled the sale and issued pattas to the agent of the former applicant. The plaintiffs then brought the suit to recover the lands from the grantee. It was held by the majority of a Full Bench (*Morgan*, *C. J.* and *Holloway J*; *Innes*, *J.* dissenting), that the tenancy created by the patta was only an annual settlement, and as such, could be terminated at the end of the year; *Morgan*, *C. J.* further held, dissenting from *Rajagopala Iyengar* v. *The Collector of Chingleput*[1] that, apart from the abandonment or resignation by the ryot, the Revenue authorities could assign lands to another for the mere fact that they were left waste through the default of the ryot, and that it was not necessary to follow the procedure prescribed by Act II of 1864; *Innes J.* adhered to his view in *Rajagopala Iyengar* v. *The Collector of Chingleput.*[1] The view of the majority of the Full Bench in *Fakir Mahammad* v. *Tirumala Chariar*[2] was doubted by *Sir Charles Turner, C. J.* and *Muthuswamy Ayyar J.* in *The Secretary of State* v. *Nunja*[3]. Subsequently cases [4] have held that the ryot is entitled to hold the land as long as he pays the revenue, and that on default his tenancy can only be determined by the legal process taken under Act II of 1864.

Proprietorship over waste lands.

We have dealt so far with the right of Government over cultivated lands and have now to deal with its right over waste lands. Though opinion is divided as regards its right over waste lands in *mirasi* villages, which will be dealt with in a subsequent Chapter, it may be taken as settled that, in others, the presumption is that all waste lands which are not the property of an individual or a community, belong to the state [5], its title thereto being

[1] 7 M. H. C. R. 98.
[2] 1 Mad. 205.
[3] 5 Mad. 163.
[4] *The Secretary of State* v. *Ashtamurthi*, 13 Mad. 89 (116); *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299 (303); *Pullanapally Sankaran Nambudri* v. *Vittil Thalakat Muhomad*, 28 Mad. 505; 15 M. L. J. 416; *Karunakara Menon* v. *The Secretary of State* (1911) 1 M.W.N. 54.
[5] *Rama Rao* v. *The Secretary of State*, 33 Mad. 1; 20 M.L.J. 66; see also *The Secretary of State* v. *Kadirikutty*, 13 Mad. 369 (376).

analogous to the title by escheat, arising from the observation of the Privy Council in *The Collector of Masulipatam* v. *Cavally Venkata Narrainappa* [1], "private ownership not existing, the State must be owner as ultimate lord." The same presumption applies to forest and waste lands in South Canara [2], but not to those in Malabar and the districts administered as part of it [3].

---

[1] 8 M. I. A. 500 (525).

[2] *The Secretary of State* v. *Krishnayya*, 28 Mad. 257; 15 M. L. J. 147.

[3] *The Secretary of State* v. *Vira Rayan*, 9 Mad. 175; *The Secretary of State* v. *Ashtamurti*; 13 Mad. 89; *The Secretary of State* v. *Bavotti Haji*, 15 Mad. 315.

CHAPTER II.

PROPERTY, OWNERSHIP AND POSSESSION.

In the previous Chapter, we have seen that the first occupant of land, by virtue of his possession, acquired property therein. We shall now deal with its conception and incidents as was prevalent in India and the names by which the right to property was known. We may start with a brief description of the Roman and English conceptions of property.

The Roman conception.

The Roman idea of ownership is denoted by the term *dominium* or *proprietas* which consists of *jus utendi* (the right of using the thing), *jus fruendi* (the right of enjoying its products), *jus abutendi* (the right of consuming it, if it is capable of consumption; this right including the right of disposition by sale, exchange, gift, mortgage, lease, etc.); *jus prohibendi*, the right of exclusive possession and enjoyment and *jus transmittendi*, the right of transmitting it to his heirs [1]. A distinction was drawn between *ex jure Quiritium* (*i.e.* right recognised by the Civil Law) and *dominium bonitarium* (*i.e.* right recognised by the authority of the prætor), which was abolished by *Justinian*.

The English conception.

The English conception of property is one derived from the feudal idea, whereby the king is lord paramount, either mediate or immediate, of all land within the realm and a subject cannot have absolute ownership in land but can have only an estate in it, held under the king directly, or under some mesne lord, or a succession of mesne lords, who,

[1] *Sandar's Justinian*, XLIX; *Poste's Gains*, 154.

or the last of whom, holds of the king [1]. The highest class of estate that can be held by the subject is an estate in fee simple. It comprises 1 the right of exclusive possession and the right to recover possession if the owner is wrongfully deprived of possession, 2 the right of free and exclusive enjoyment, extending to the right of using, altering or destroying the thing owned at the owner's pleasure, so that he does not violate any other person's right to security of person or property and 3 the right to free power of disposition over the object of ownership and indeterminate duration of the interest [2].

The Indian conception.

The Indian idea of property was defined by *Mount-Stuart Elphinstone* to consist in "the exclusive use and absolute disposal of the powers of the soil in perpetuity; together with the right to alter or destroy the soil itself, where such an operation is possible. These privileges, combined, form the abstract idea of property; which does not represent any substance distinct from these elements. Where *they* are found united, *there* is property and nowhere else [3]. This definition was accepted by the late *Sir Charles Turner*, a former Chief Justice of Madras in his *Minute on the Draft Bill relating to Malabar Land Tenures* [4]. But *Mr. Baden—Powell* remarks on this definition that "this is really the Roman ideal—the *usus, usufructus, abuses et vindicatio*—rather than an Eastern formula and it may certainly be denied that any such abstract ideas ever prevailed in India" and adds "but at the same time, we must be prepared to find particular claims to land expressed with great force" [5]. It will be presently shown that this criticism is not accurate.

Ancient Hindu sages.

The ancient Hindu sages who lived and thought at the time when Rome was in its infancy, never speculated on any theory but always looked to the practical side of affairs. Their writings give the incidents of property, which at a later day were declared by jurists of other

[1] *Halsburys' Laws of England*, 24, 138, 139; *Williams' Real Property*, 6.

[2] *Williams' Real Property*, 2.

[3] *History of India*, 79.

[4] 17.

[5] L. S. B. 1. I. 220.

countries to constitute the idea of property or ownership in the abstract. No doubt the abstract idea of property is the product of the juristic refinements of a later age. Neither the use of property nor the idea of ownership was confined solely to the Aryans, for the *Subhodhini* commenting on the passage of the *Mitakshara* discussing proprietary rights says, "Besides the use of property is observable among barbarians, to whom the practice enjoined by the sacred institutes is unknown" [1]. *Visweswara Bhatta* evidently means by barbarians those who were not subdued by the Aryans nor brought under their influence.

Later Hindu writers.

Later commentators, however, had to deal with the abstract idea of property. The word property is used by them with reference to the thing and ownership with reference to the person. *Jimuta Vahana* in the *Daya Bhaga* declared ownership to imply "the quality (in the subject owned) of being used (by the owner) according to his pleasure and arises out of law [2]"; *Mitra Misra* in the *Viramitrodaya* said that "the distinctive feature of property is the capability of being dealt with according to pleasure; that which is capable of being used according to one's own pleasure is his own property" [3] and later on "property is certainly a substance of a distinct category of its own, which is liable to production and destruction, and is manifested by the cognizance of its means" [4]. Similar ideas were also expressed in the *Smriti Chandrika* [5] and the *Saraswati Vilasa* [6]. The commentators also recognised at the same time that the exercise of the rights of ownership was subject to the limitations imposed by law.

Jimuta Vahana.

Mitra Misra.

The Mahomedan conception.

The conception of property according to Mahomedan law is thus stated by *Mr. Justice Abdur Rahim* in his book on *Mahomedan Jurispudence*, [7] "It is the very conception of property that its owner may use and enjoy it as he chooses.

[1] *Mitakshara*, Ch. I. Sect. 1 pl. 9 (*Colebrooke's translation*, 246.)

[2] *Mandlik's Vya. May. and Yagna*, 31, Note (1).

[3] 10 (*Sarkar's translation*).

[4] *Ibid*, 24.

[5] Ch. I. pl. 25, p. 10 (*Krishnaswamy Iyer's translation*).

[6] S. 404, p. 82 (*Foulkes' translation.*)

[7] 270.

His rights in this respect, generally speaking, are only limited by similar rights of others and subject to such burdens as may be imposed by the State. Limitations upon an owner's right of user and enjoyment are mostly imposed with reference to land, because the mode in which a man uses his land often affects his neighbours. The general principle is that the owner of land is entitled to use it and enjoy it in the manner that suits him best even if it causes inconvenience or injury to his neighbours, provided he does not destroy the neighbour's property or makes it useless to him."

Recognition of transfers under Hindu Law.

In his Minute on Malabar Land Tenures, *Sir Charles Turner* remarked that "the Hindu Law not only recognised the sale of land, the gift of land, and the inheritance of land, all in complete ownership; subject, except where held by Brahmans, to the payment of the king's due; but it also recognised a multiplicity of forms of mortgage, some extending to the usufruct of the land, others to the actual ownership" [1], and after discussing the various forms of conveyances prevalent in Malabar, he observed that "they point to an ownership of the soil as complete as was enjoyed by a freeholder in England" [2].

In the Tamil districts.

In the Tamil districts, the right to property was originally known as *kaniatchi* in Tamil and *swastium* in Sanskrit and its holder as *kaniatchidar* and *swastiumdar* [3]. The word *kaniatchi* is derived from *kani* meaning property or possession, and *atchi* meaning power or dominion and the compound means "that which is held in free and hereditary property" [4]. After the Mahomedan conquest of India, this right to property was denoted by the Arabic word *mirasi* and the holder *mirasidar*. *Mirasi* means primarily inheritance and secondarily right by inheritance or inherited property or right [5], and *mirasidar* the holder of hereditary lands [6], or hereditary proprietor or landholder [7]. In the old province of Dindigul, *mirasidars*

[1] 17.
[2] 23.
[3] *Mirasi Papers*, 35, 45, 106, 372; *Bader Powell*, L. S. B. I. III. 116.
[4] *Wilson*, 258.
[5] *Wilson*, 342; *Chingleput Dt. M.* 215.
[6] *Wilson*. 342.
[7] *Man of Adminis*, III. 504.

were known by the name of *pattookut ryots*[1]. In Tanjore during the time of the Hindu Government, the right latterly denoted by the term *mirasi* was known as *kunbava* [2]. The word *miras* was introduced into the Madura District during the nineteenth century[3] and the words *miras* and *mirasidars* were there applied to hereditary village offices and their holders and not to men who were denoted elsewhere by that name, the probable reason being that during the anarchy which prevailed in the latter half of the eighteenth century the only inhabitants who remained at their posts were the village officers and consequently the Nawab's officers gave them the name of *mirasidars* [4]. The word *mirasi* was latterly applied to other hereditary privileges of a different nature though more or less connected with land, such as village offices and sometimes to all kinds of hereditary rights, whether attached to the land or not.

Misconception introduced by the word, *mirasi*.

The introduction of the Arabic word *mirasi* after the Mahomedan conquest to denote the hereditary rights in land led the Madras Government in 1786 to believe that they came into existence only then, and therefore to define *mirasi* to mean not a right but a preference to the cultivation of the soil, the proprietary right to which was exclusively vested in the sirkar [5]. But the Board of Revenue at once pointed out that the rights claimed under the term could be traced far beyond the Mahomedan conquest to unascertainable antiquity in the Hindu term *kaniatchi* and that they were always considered hereditary rights, subject only to the obligation of cultivating lands and paying the Government share of the produce [6]. *Mr Place* also in his report in 1799 demurred to the definition of the term given by the Government and pointed out that the mirasidars had an undoubted hereditary property in the soil and defined *mirasi* to mean a freehold estate of inheritance and a

[1] *Wilson*, 412; *Fifth Report*, II. 494; ibid, *Glossory*, XXXIX.
[2] *Mirasi Papers*, 89; *Baden Powell*, L.S. B.I. III. 116.
[3] Dt. M. Part V. Ch. I. 13.
[4] *Ibid*, Part V. Ch. I. 14.
[5] *Mirasi papers*, 26, 27.
[6] *Ibid*, 35.

mirasidar a tenant in fee simple [1]; and the author of the Chingleput District Manual remarks that the definition adopted by the Government is opposed to everything in truth and justice and that the only excuse for it was the ignorance under which it was made, though it is rather curious that it was never withdrawn [2].

Mirasidar's power of disposition.

The *mirasidar's* power of disposal over cultivated lands was absolute, though at first, the other mirasidars of the village had the right of pre-emption or had to assent to such disposal. He could sell, mortgage, lease or dispose of his property in any way he liked [3], and as pointed out by *Col. Blackburne*, "his land possessed all the qualities of property" [4]. No permission of the Sovereign was considered necessary to validate an alienation of land and no permission was in fact obtained [5]. It has been shown in the previous Chapter that a grant by the king conveyed only a right to land revenue and that, whenever it was intended to convey the occupant's right also, it was either purchased and made over to the grantee or provision was made in the deed of grant for such purchase or the land itself was at his disposal [6].

Their liability.

But the mirasidars were bound to cultivate their lands to the best of their ability according to the quantity of water that could be commanded and the means they possessed [7] and in the days of the Mahomedan rule, their lands were transferred to others if they failed to do so.

South Canara.

In South Canara the proprietors of land were known as *wargadars*, *mulavargadars*, or *mulgars*. According to *Col.* (afterwards *Sir Thomas*) *Munro* the lands there constituted a sort of private property more ancient and probably more

[1] *Mirasi Papers*, 53. Mr. Ellis on this definition remarks that the mirasidar's property cannot be strictly compared to a *fee* properly so called; *Ibid*, 257.

[2] *Ching. Dt. M. 257.*

[3] Mr. Ellis, *Mirasi Papers*, 181, 197; In Tinnevelly: *reports of Lushington*, *Mirasi Papers*, 77; of *Mr. Hodgson*, ibid. 105; In Tanjore (which originally comprised Trichinopoly also); *reports of Mr. Harris*, ibid. 85; of *Col. Blackburne*, ibid, 89; of *Mr. Wallace*, ibid, 94, 98; *Dt. M.* 397; In Chingleput: *reports of Board of Revenue*, *Mirasi Papers*, 32; *of Mr. Place*, ibid. 48: In Madura: *Dt. M. Part*, V. Ch. I. 4; in Dindigul: *Mr. Hodgson's Report*, *Mirasi Papers*, 111.

[4] *Col. Blackburne's Report's*, *Mirasi Papers*, 90.

[5] Ibid.

[6] *Ante Ch. I.* p. 12.

[7] *Mirasi Papers*, 35.

perfect than that of England [1]. In *Vyakunta Bapuji* v. *The Government of Bombay* [2], the learned judges observed that the *muli*, the *mirasi*, the *kaniatchi*, the *swastium* and the *janmakari* tenures were merely so many various names for the ancient hereditary proprietary right of the ryot in the soil, recognized by Mr. Ellis of Madras, Mountstuart Elphinstone, Lord Willam Bentick, Professor H. H. Wilson, the Madras Board of Revenue, and other eminent authorities, and that this proprietary right was subject to the payment to the Sovereign of a share of the produce as assessment.

Warg.

It appears that in the fourteenth century the whole of the lands in South Canara were parcelled out among a large number of land-holders paying annual revenue in various gradations from 5 to 5000 pagodas, the average being 50 pagodas [3]. The estates so formed went by the name of *wargs*. The word *warg* is derived from the Sanskrit *varga*, a leaf, having been originally used for the leaf accounts kept by the revenue authorities; in course of time the term came to denote the holding for which the account was kept [4]. A *warg* is often composed of unconnected parts situated in different villages and sometimes even in different districts [5], and therefore the word estate which conveys the idea of compact property cannot properly be applied to a *warg* [6]. It comprises not only cultivated but waste lands as well. Though the theoretical basis of assessment was a share of the produce of each field, the assessment was never fixed on particular fields or portions of a warg but is a lump assessment for the whole warg [7]. A *wargdar* is

[1] *Fifth Report*, II. 77.

[2] 12 Bom H. C. R. App. 1 (210).

[3] *Fifth Report*, II. 455; *South Canara Dt.* M. 118. [This Statement is taken from the report of Sir Thomas Munro. The parcelling out of lands among land-holders is a feudal idea not established in India. What was done apparently was that the lands already with them were divided into holdings so as to facilitate revenue collections and no fresh grants were ever, and could ever have been, made.]

[4] *South Canara* Dt. M. 118; *Mirasi Papers*, 488 (note); *Vyakunta Bapuji* v. *The Government of Bombay* 12 Bom. H. C. R. App. 1 (19); *The Secretary of State* v. *Krishnayya*, 28 Mad. 257 (278.)

[5] *South Canara Dt.* M 118; *Vyakunta Bapuji* v. *The Government of Bombay*. 12 Bom. H.C.R. App. 1 (19); *The Secretary of State* v. *Krishnayya*, 28 Mad. 257 (278).

[6] *The Secretary of State* v. *Krishnayya*, 28 Mad. 267 (278).

[7] *South Canara* Dt. M. 118.

defined by Wilson[1] thus: "The proprietor of a hereditary estate, and in that capacity sometimes the representative of a whole village, collecting and paying the assessment of the whole, although others may have portions of the village lands as separate property: the title is also, though laxly, assigned to lessees under the original proprietor, who are known as Sub-Wargdars." It happens in South Canara that, though the lands have passed out of the hands of the proprietor and vested in other persons by sale, inheritance or otherwise, the varga or leaf stands in the name of the original proprietor.

Muli and geni or sirkar-geni wargs.

The *wargs* are of two kinds: *muli wargs* and *geni or sirkar-geni wargs.* The word *muli* is a contraction of *mulavarga* which means original proprietary right in land and *mulavargadar* means the proprietor of an ancestral hereditary estate[2]. *Mula* is derived from the Sanskrit, *mul* signifying literally a root, and figuratively (*inter alia*) the root of a tree or origin of a family and hence arises the character of permanence or perpetuity which we find in it when used in combinations, as in *mulavarga* and *mulavargadar* as also in *mulgeni*[3]. Sometimes even after the wargadar has sold away a portion of the *warg*, the patta for the whole *warg* stands in his name and the purchaser instead of paying his share of the revenue direct to Government pays it to the wargadar who thereupon pays the full assessment to Government and such an owner is called *walawargadar* and the wargadar is paid some consideration, known as *moggu*, for his trouble in collecting the revenue and paying it over to Government[4]. When, however, on the sale of a portion of a warg, a sum is fixed in the deed as the proportionate revenue on the portion sold and the purchaser pays it direct to Government, he is known as *kuduthalathar*. But his lands are liable to be proceeded against for any default in the payment of the revenue due on the other portion of the warg if they are not separately registered in his name

Muli warg.

Wala-wargadar.

Kudutha-lathar.

1 *Glossary*, 542.

2 *Ibid*, 542.

3 *Wilson*, 353; *Vyakunta Bapuji* v. *The Government of Bombay*, 12 Bom. H. C. R. App. 1 (19).

4 *Ganapati Bhatta* v. *Ananda Bhatta*, (1911) 1 M.W.N. 233.

in the Collector's register. After the introduction of the settlement and the ryotwari system and the issue of pattas in South Canara, no distinction now exists between the *wargadar*, the *walawargadar* and the *kuduthalathar* and they are all now ryotwari pattadars. *Geni or sirkar-geni wargs* are estates which have escheated to Government by lapse of heirs or by abandonment by proprietors [1]. The legal position of a *mulavargadar* and of a *geni* or *sirkar-geni* wargadar is the same[2]. *Geni warg* must be distinguished from *mulgeni*. The former is held directly under Government while the latter under a *mulavargadar*.

Geni or sirkar-geni wargs.

Kadim and hosageme wargs.

Wargs are also classified into *kadim* and *hosageme* wargs [3]. *Kadim* (literally old, ancient) wargs are those existing before the commencement of the Company's Government and *hosageme* (new cultivation) wargs, those formed after the commencement of the company's rule by the cultivation of immemorial waste [4]. The tenure of a *hosageme* wargadar is the same as that of a *mulavargadar*, except that the privileges and easements over jungle and pasture lands, called *kumaki* rights, have not been conceded to *hosageme* wargs created since *fasli* 1276 [5].

Bharti and kambharti wargs.

Wargs are again divided into (1) *bharti*, those that are able to pay the full *tharao* assessment and (2) *kambharti*, those that are unable to pay the full assessment. The latter are further sub-divided into (*a*) *vaida*, holdings that require a progressive assessment, that is, that pay by increased rates till they became *bharti i. e.* attained to full assessment, (*b*) *board sipharas*, those favoured by the Board of Revenue, being estates disadvantageously situated which could not be expected to pay in full, and (*c*) *taniki*, those which are uncertain and settled annually [6].

Vaida.

Board sipharas.

Taniki.

Kumaki lands.

Wargs created before *fasli* 1276 have attached to them *kumaki* lands, that is, lands allowed to assist in the cultivation and intended to afford to the ryots

1 *South Canara Dt.* M. 120.
2 *Ibid*, 120.
3 *Ibid*, 118.
4 *Ibid*, 120.
5 *Ibid*.
6 *Ibid*, 107, 116, 120; *Baden—Powell*, L.S.B. I. III. 150; *Vyakunta Bapuji* v. *The Government of Bombay*, 12 Bom. H. C. R. App. 1 (172).

the means of procuring leaves from the brushwood or jungles growing on them as manure for their fields and to furnish grass as fodder for their cattle [1]. Since the year 1848, they extend only to 100 yards of the forests adjacent to the *warg* lands all round the warg[2]. The wargadar has no proprietary right in those lands [3]. His rights therein are merely in the nature of a license and are therefore liable to be extinguished by Government conveying the lands to another [4].

Kumri cultivation.

Kumri cultivation is cultivation of land outside a warg by felling and burning a patch of the forest, the ashes acting as manure. After one or two crops are raised, the plot is abandoned and a fresh patch is resorted to and treated in the same way. *Kumri* cultivation gives no proprietary right in the forest in which it is carried on or even over the spots which had been actually cultivated [5].

Mulavargadar's right of disposition.

The mulavargadars have been from ancient times alienating their lands by gift, sale, and mortgage[6]. Nothing but gift or sale, nor mere non-payment of rent, could take them from the owners. If they absconded with balances standing against them, the lands were transferred to another person; but if they or their heirs returned at ever so distant a period, they were restored their holdings, on their paying a reasonable compensation for the balance and such extra expenses as might have been incurred on account of improvements [7].

In Malabar.

In Malabar the exclusive right and hereditary possession and usufruct of the soil is denoted by the term *jenm* which means birthright and the holder thereof is known as *jenmi*, *jenmakaran* or *mutalalan* [8]. Until the conquest of Malabar by the Mahomedan princes of Mysore, the *jenmis*

[1] *The Secretary of State* v. *Krishnayya*, 28 Mad. 257 (279); *Matilda Fernandez Bai* v. *Alex Pinto*, 15 I. C. 278.

[2] *South Canara Dt.* M. 129; *The Secretary of State* v. *Krishnayya*, 28 Mad. 257 (280).

[3] *The Secretary of State* v. *Krishnayya*, 28 Mad. 257; *Sankaranaranappaya* v. *The Secretary of State*, (1911) I M. W. N. 91.

[4] *The Secretary of State* v. *Krishnayya*, 28 Mad. 257; *Matilda Fernandez Bai* v. *Alex Pinto*, 15 I. C. 278.

[5] *South Canara Dt.* M. 123; *Bhaskarappa* v. *The Collector of North Canara*, 3 Bom. 452 (727); *The Secretary of State* v. *Krishnayya*, 28 Mad. 257 (271).

[6] *Fifth Report*, II. 77, 456, 479.

[7] *Ibid*, 456.

[8] *Wilson*, 359.

appear to have held their lands free from any liability to make any payments, either in money or produce, to the government and therefore until that period, such an absolute property was vested in them as was not found in any other part of the Presidency [1]. The late *Sir Charles Turner* after noticing the various forms of transactions prevalent in Malabar remarked they pointed to an ownership of the soil as complete as was enjoyed by a freeholder in England [2].

Policy of Government.

At the commencement of the last century, it was the policy of the Government to allow all lands to become private property [3]. It was intimated in the despatch of *Lord Wellesly* that it never could be desirable that the Government itself should act as the proprietor of the lands and should collect the rents from the immediate cultivators of the soil. When in 1808 the Board of Revenue suggested that an augmentation of revenue might be derived from waste lands reserved, they were informed that the Government did not look to any advantage of that nature beyond the benefit of increasing the amount of public taxes in proportion to the existing taxes of the country [4]. In their despatch of 17th December, 1813 relating to the settlement of Malabar, the Court of Directors observed that in Malabar they had no property in land to confer, with the exception of some forfeited estates [5].

Jenmis' power of disposition.

These jenmis have been from time immemorial exercising the right of selling, mortgaging, or otherwise dealing with the property [6]. They had full absolute property in the soil [7].

In the Telugu districts.

In the northern portions of the Presidency comprising the Telugu Districts, there is no reason to suppose that the conditions were originally different from those that existed in the other parts of the Presidency. These northern districts were the first to be occupied by the Mahomedans and formed the seat of their government, and on account of

[1] *Revenue Selections*, I. 889.

[2] *Minute*, 23.

[3] Despatch of Lord Wellesly quoted in *Vyakunta Bapuji* v. *The Government of Bombay*, 12 Bom. H. C. R. App. 1 (144).

[4] *The Secretary of State* v. *Vira Rayan*, 9 Mad. 175 (180).

[5] *The Secretary of State* v. *Vira Rayan*, 9 Mad. 175 (180); *The Secretary of State* v. *Ashtamurthi*, 13 Mad. 89 (109).

[6] *Fifth Report*, *II*. 81, 441.

[7] *Ibid*, 441.

the high taxation levied by them, the lands lost their saleable value; and the continuance of that state for centuries effaced all traces of disposition of lands from the memory of man. Therefore at the time when those districts came first under the power of the English, no traces of sale or other disposition of lands could be found[1]. The cultivators of the soil were divided into two classes (*a*) *kadims*, and (*b*) *payacarries*. The former held lands under Government and paid the revenue thereon; and beyond the right of holding their lands hereditarily as long as they paid the Government revenue, they never appear to have exercised any right of disposition over them. Their position was no better than that of the *ulcudi payacarries* of the south[2]. The *payacarries* held lands of the *kadims*.

Possession, evidence of ownership

Having seen the various forms of ownership, we shall next see how far possession affords presumption of ownership. Possession has got a two-fold value: it is evidence of ownership and is itself the foundation of a right to possession[3]. Possession lawfully obtained *prima facie* raises a presumption of ownership in the absence of evidence rebutting such presumption[4]. Possession, however short, will raise that presumption[5], and long possession is not only evidence of title but is a good and valid title by itself[6]. It is *prima facie* exclusive[7], and it is for the person who impugns the exclusive title to show that it originated in some way which has preserved

[1] *Mirasi Papers*, 388.
[2] *Mirasi Papers*, 388; *Nellore Dt. M.* 477.
[3] *Hari Khandu* v. *Dhondi Natha*, 8 Bom. L. R. 96.
[4] *Nawab Ajajuddin Ali Khan* v. *The Secretary of State*, 28 Mad. 69; *Puranchunder Mookerjee* v. *Protap Narain Paul*, 9 W. R. 120; *Ayesha Bibi* v. *Kunhye Molla*, 12 W. R. 146; *Runjeet Ram Panday*, v. *Goberdhun Ram Pandey*, 20 W. R. 25 (P. C.); *Ismail Ariff* v. *Mahomed Ghouse*, 20 Cal. 834: 20 I. A. 99; *Ramachandra Narayan* v. *Narayan Mahadev*, 11 Bom. 216; *Vithoba* v. *Narayan*, 11 Bom. 221, note (b); *Rajaram* v. *Nunchand*, 5 Bom. L.R. 225; *Ali* v. *Bachubibi*, 5 Bom. L. R. 264; *Hari Khandu* v. *Dhondi Natha*, 8 Bom. L. R. 96; *Bhagwansing Daulat Singh* v. *The Secretary of State*, 10 Bom. L. R. 571; *Bala Kushaba* v. *Abai Amrita Vaghmode*, 11 Bom. L. R. 1093; *Bhikhi Rai* v. *Udit Narain Singh*, 25 All. 366.
[5] *Puranchunder Mookerjee* v. *Protap Narain Paul*, 9 W. R. 120.
[6] *Rung Lall Misser* v. *Raghoobur Singh*, 9 W. R. 169.
[7] *Muthurakko Thevan* v. *Orr*, 21 M.L.J. 615: 10 M.L.T. 12; *Mohun Lal* v. *Amratlal*, 3 Bom. 174; *Ramchandra Narayan* v. *Narayan Mahadev*, 11 Bom. 216; *Vithoba* v. *Narayan*, 11 Bom. 221, note (b).

his own right [1]. It must be presumed to have a legal origin and have the usual incidents to actual, continued and peaceful enjoyment [2]. The person in possession without a title has got a right to remain in possession against all but the true owner, and has an interest capable of being inherited, devised or conveyed [3]. Therefore when the possession of such a person is disturbed, he can sue to recover it from any person who is not the true owner, apart from S. 9 of the Specific Relief Act[4]. The contrary view was taken in *Nisachund Gaita* v. *Kanchiram Bagani*[5] in which it was held that previous possession for any time short of the statutory period would not entitle the plaintiff to a decree for recovery of possession in a suit brought more than six months after dispossession, even if the defendant could not establish a title to the land. A party in possession is entitled to recover the value of the produce of the land from any person who has taken it away, unless such person is the rightful owner [6].

Suit for ejectment.

In a suit for ejectment, the plaintiff must prove possession and dispossession within twelve years of suit[7] and the fact that he showed antecedent title is not enough without proof of possession within twelve years[8]. He must succeed

[1] *Shahaboodeen Chowdhry* v. *Ram Gutty Chuckerbutty*, 9 W. R. 556; *Ramachandra Narayan* v. *Narayan Mahadev*, 11 Bom. 216; *Vithoba* v. *Narayan*, 11 Bom. 216, note (b).

[2] *Vithoba* v. *Narayan*, 11 Bom. 216 note (b).

[3] *Mustapha Sahib* v. *Santha Pillai*, 23 Mad. 179; *Narayana Row* v. *Dharmachar*, 26 Mad. 514; *Chinna Reddi* v. *Budda Reddy*, 2 L. W. 912; *Sundar* v. *Parbati*, 12 All. 51 (P.C.); *Gobind Persad* v. *Mohanlal*, 24 All. 157; *Pahlwan Singh* v. *Rama Bharose*, 27 All. 169.

[4] *Narayana Rao* v. *Dharmachar*, 26 Mad. 514; *Maikal Servai* v. *Thambuswami*, (1914) M.W.N. 784: 1 L.W. 853; *Govinda Padayachi* v. *Doraswami Padayachi*, 9 M.L.T. 409; *Chinna Reddi* v. *Budde Reddy*, 2 L. W. 912; *Sundar* v. *Parbati*, 12 All. 51(P.C.); *Gobind Persad* v. *Mohanlal*, 24 All. 157; *Pahlwan Singh* v. *Rama Bharose*, 27 All 169; *Umrao Singh* v. *Ramji Das*, 36 All. 51; *Ayesha Bibi* v. *Kunhye Mollah*, 12 W.R. 146; *Bejoy Chunder Banerjee* v. *Prosonno Mookerjee*, 4 Cal. 327; *Ismail Ariff* v. *Mahomed Ghouse*, 20 Cal. 834: 20 I.A. 99; *Pemraj Bhavaniram* v. *Narayan Shevram Khisti*, 6 Bom. 215; *Krishna Rao Yashvant* v. *Vasudev Apaji Ghotikas*, 8 Bom. 371; *Gàngaram* v. *The Secretary of State*, 20 Bom. 798.

[5] 26 Cal. 579.

[6] *Lep Singh Khasia* v. *Nimar Khasia*, 21 Cal. 244.

[7] *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi*, 16 Cal. 473; *Mahomed Amanulla Khan* v. *Badan Singh*, 17 Cal. 137; *Mirza Shamsher Bahadur* v. *Kunj Behari Lal*, 7 C.L.J. 414; *Dharma Kanta Lahiri* v. *Gabar Ali Khan*, 17 C.L.J. 277.

[8] *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi*, 16 Cal. 473.

by virtue of his title and a party in possession with a bad title is entitled to remain until some other person shows a better title[1]. Where the evidence of possession is equally strong on both sides, preference should be given to the evidence on the side of the party with whom title is found[2].

Possession of part.

Possession of one part is presumed to be possession of the whole[3], but this presumption cannot be made in favour of a trespasser, whose possession is to be confined only to the part actually occupied by him[4]. The moment he abandons possession of the land[5], or it is submerged by flood and is therefore incapable of physical possession[6], the possession of the true owner revives.

Jungle and waste lands.

As regards jungle and waste lands possession is deemed to be with him who has got the title [7].

1 *Gopeenath Doss* v. *Dyanidhee Soondura Mohapattur*, 7 W.R: 485; *Soodukhina Chowdhrain* v. *Raj Mohun Bose*, 11 W.R. 350.

2 *Ranjeet Ram Panday* v. *Soburdhun Ram Panday*, 20 W.R. 25 (P. C.); *Dharm Singh* v. *Hur Pershad Singh*, 12 Cal. 38; *Balu Kasturi Singh* v. *Raj Kumar Babu Bissun Pragas Narain Singh*, 8 C.W.N. 876; *Mirza Shamsher Bahadur* v. *Kunj Behari Lal*, 7 C. L. J. 414; *Nawab Bahadur of Murshidabad* v. *Gopi Nath Mandal*, 13 C. L. J. 625; *The Secretary of State* v. *Kalika Prosad*, 15 C. L. J. 281; *Lala Singh* v. *Mir Latiff Hussain*, 21 C. L. J. 480; *Vithaldas* v. *The Secretary of State*, 26 Bom. 410.

3 *Karia Koundan* v. *Raghava Reddi*, 1 L.W. 410, *Mohini Mohun Roy* v. *Promoda Nath Roy*, 24 Cal. 256; *Vithaldas* v. *The Secretáry of State*, 26 Bom. 410.

4 *Karia Koundan* v. *Raghava Reddi*, 1 L. W. 410; *Mohini Mohan Roy* v. *Promoda Nath Roy*, 24 Cal. 256; *Brojo Nath Bose* v. *Durga Persad Singh*, 5 C. L. J. 583; *Jagendra Nath Roy* v. *Baladev Das Marwari*, 6 C.L. J. 735; *Mirza Shamsher Bahadur* v. *Kunj Behari Lal*, 7 C. L. J. 414: *Nawab Bahadur of Murshidabad* v. *Gopi Nath Mundul*, 13 C. L. J. 625; *The Secretary of State* v. *Kalika Prosad*, 15 C.L.J. 281.

5 *Venkatachala Iyengar* v. *Chinna Goundan*, 12 I. C. 583; *Bholanath Singh* v. *Wood*, 32 Cal. 287; *Ganapathy* v. *Raghoonath*, 11 Bom. L.R. 1087.

6 *The Secretary of State* v. *Krishnamoni Gupta*, 29 Cal. 518: 29 I.A. 104, overruling: *Kaily Churn Sahoo* v. *The Secretary of State*, 6 Cal. 725; *Madhabi Sundari Dassya* v. *Gagendra Nath Tagore*, 9 C.W.N. 111; *Mirza Shamsher Bahadur* v. *Kunj Behari Lal*, 7 C.L.J. 414; *Baroda Prosad Roy* v. *Annoda Mohun Roy*, 13 C. L. J. 30; *Mazhar Hussain* v. *Behari Singh*, 28 All. 760.

7 *Sunnud Ali* v. *Mussamut Kurimoonissa*, 9 W. R. 124; *Raja Leelanund Singh* v. *Mussamut Basheeroonissa*, 16 W.R. 102; *Mocheeram Majhee* v. *Bissambhur Roy Chowdhry*, 24 W.R. 410; *Mohima Chunder Dey Sirkar* v. *Hurroha Sircar*, 3 Cal 769; *Mohomed Ali Khan* v. *Abdul Ganny*, 9 Cal. 744; *Rai Kumar Roy* v. *Gobind Chunder Roy*, 19 Cal. 660; *Mohini Mohan Roy* v. *Promoda Nath Roy*, 24 Cal. 256; *Udit Narain* v. *Golab Chand*, 27 Cal. 221; *Radha Singh Roy* v. *Inglis*, C.L. J. 7 364; *Jogindra Nath Roy* v. *Hanmanta Kumari Debi*, 14 C.L. J. 369; *Madhabi Sundari Dassya* v. *Gagendra Nath Tagore*, 9 C. W. N. 111; *Vithaldas* v. *The Secretary of State*, 26 Bom. 410.

CHAPTER III.

THE MIRASI TENURE.

Meaning of mirasi tenure.

The term *Mirasi* tenure is applied in South India to denote the tenure of villages held jointly by co-sharers who constitute the proprietors thereof according to their shares. The difference between this form of holding and that under the ryotwari form is, that in the latter each proprietor holds his lands independently of others without any sort of community of interest among themselves, apart from that which a group of cultivators must have when located in one place, bound by certain customs, with certain interests in common, and possessing within the circle of their villages the means of local government and of satisfying the wants of life without much reference to neighbouring villages. Another and perhaps the most important difference between the two forms of holding is that in the latter all the unappropriated waste belongs to the Government, while in the former opinion is divided as regards the right of the mirasidars in such waste.

Description of an Indian village.

A village, geographically considered, is a tract of country comprising some hundreds or thousands of acres of arable and waste land; politically viewed, it is a little republic or rather a corporation, having within itself its municipal officers and corporate artificiers. Its proper establishments of officers and servants consist of the following description: (1) The Headman, differently called, *Ambalakaran* or *Ambalam*, *Dolabehara*, *Gauda* or *Gowd*, *Kapu* or *Pedda Kapu*, *Karzi*, *Maniagaran or Manigar*, *Moliko*, *Nattanmaikaran*, *Patel*, *Pillai*, and *Reddi*, who has the general superintendence of the affairs of the village, settles

the disputes of the inhabitants, attends to the police and performs the duty of collecting the revenues within his village; a duty which his personal influence and intimate knowledge of the situation and concerns of the people render him best qualified to discharge; (2) The *Karnam* or *Shanboag*, who keeps the accounts of cultivation, and registers everything connected with it; (3) the *Taliary*, whose duty it is to give information of crimes and offences and to escort and protect persons travelling from one village to another; (4) the *Totie*, known also as *Bariky*, *Burky*, *Madiga*, *Vettiyan* and *Vettivadu*, whose duty consists, among other things, in guarding the crops and assisting in measuring them; (5) the *Nirgunti*, known also as *Kalvay Pannadi*, *Kambakkaran*, *Kambamkatti*, and *Madayvetti*, who distributes the water of the streams or reservoirs in just proportion to the several fields; (6) the *Boundaryman*, known as *Kavali*, *Kaval-karan*, *Pasban*, and *Payik*, who preserves the limits of the village, or gives evidence respecting them in cases of dispute; (7) the *Joshee*, *Jotishee*, *Panchangi*, and *Purohit*, who proclaims the lucky or unpropitious periods for sowing and threshing; (8) the *Brahman*, who performs the village worship; (9) the *Schoolmaster*, who teaches the children in the village to read and write; (10) the *Blacksmith*, called also *Kammar*, *Karuman*, *Kollan*, and *Lohar*, for making implements of husbandry; some villages have goldsmiths called *Tattan*, and *Kamsala*; (11) the *Carpenter* called *Badai*, *Badige*, *Tatchu*, and *Wadla*, for making implements of husbandry and building the dwelling of the ryot; (12) the *Potter*, called *Kummara*, *Kummari*, and *Kusavan*; (13) the *Washerman*, called *Dhobi*, *Tsakali*, and *Vannan*; (14) the *Barber*, called *Ambattan*, *Hajjam*, *Mangali* and *Navidan*; (15) the *Chakkili*, *Chamar*, and *Cheppulu-Kuttavadu*, a man of low caste who works in hides and leather and makes the leather bags for drawing water, and any other leathern articles for public use; (16) The *Cowherd*, who looks after the cattle; (17) the *Doctor*, called *Hakim*, *Parihari*, and *Vaidyan*; (18) the *Dancing girl*, called *Basavi*, *Dasi*, *Devadiyal*, and *Kanchani* who attends at rejoicings; (19) the *Musician* and (20) *the Poet*.

The above description substantially taken from the Fifth Report[1] is as true to-day as it was then and represents the full complement of village officers and servants. They are paid either by assignments of lands, called *manyams*, or by small shares of the crops before division, called *russooms*, *marahs* or *swatantrums*; certain officers are sometimes paid both. Some villages, however, do not have all the officers above-mentioned, but only such of them as are essential for the carrying on of agriculture. The above description applies to what may now be called the *ryotwari* form of villages; and applies equally to the *mirasi* or joint form with the exception that in the latter there were no *headmen*, whose place was taken by the council of elders [2].

Division of a Tamil village.

The whole area of a Tamil village is divided into (1) *warapat*, (2) *tirwapat*, (3) *tarisu*, and (4) *poramboke*. *Warapat* are the cultivable lands which give waram or share of the produce, generally nanja or wet lands; *tirwapat*, lands which pay a tirwa or money tax, generally punjas or cultivated wastes, and gardens; *tarisu*, waste divided into two classes, *sheykal carambo i.e.*, cultivable waste and *anadi carambo i.e.*, immemorial waste; and *poramboke*, lands incapable of cultivation consisting of rocks, public roads, beds of rivers, tanks and watercourses, burning grounds, the paracheri or suburbs of the village occupied by the huts of pariahs and other outcastes, the lands on which the different temples stand and the site of the village itself called *nuttum* [3].

Division of a Telugu village.

The same division of lands is also found in Telugu villages. A Telugu village is thus described by the Board of Revenue in its minute dated 5th January 1818: "A Telinga village in regard to its internal constitution, and the community of interest which unites its inhabitants, is precisely the same as one in the Tamil country. Its lands are also divided, in a similar manner, into waste, and cultivated land; the latter is also subdivided into mauniams, or lands on which the whole of the Government tax has been alienated to individuals,

[1] II. 13; *Wilks' History of Mysore*, I. 73; *Maine Vill. Com.* 125, *et. seq*; *Bellary Dt.* M. 188.

[2] *Chingleput Dt. M.* 207.

[3] *Mirasi Papers*, 373—375.

khundregas, or lands on which a portion only of the Government tax has been so alienated, and lands upon which the full tax is paid to the Government. The nature of the tax payable on the land seems also originally to have varied, as in the Tamil country, with the nature of the crop. On the *maganee*, or lands cultivated with a wet crop, the *Koroo* or Government share of the produce was taken. On the remainder, being the *made paloo* or Ryot's share, literally *the share of the plough-handle*, and on land cultivated with a dry crop, or with garden or plantation produce, a fixed money rent was generally paid, in the same manner as in the southern provinces; but in some cases the revenue on dry crops was rendered in kind" [1].

Feature of the mirasi tenure.

The distinctive feature of the *mirasi* tenure, a feature which is as old as the tenure itself, which still survives, is the division of the village into equal shares, each made up so as to yield an equal amount of produce and each including a proportionate share of all the benefits of common property [2]. This division is supposed to have been made at the original settlement of the village, the number of shares apparently corresponding to the number of settlers that occupied or of the labourers which each settler brought with him [3]. This is rendered probable by the fact that all villages are not divided into the same number of shares. One village is divided into 4 shares, another into 30, and a third into 160, these apparently representing the number of settlers that came there. The number of shares according to the original distribution is never forgotten. Where one original share held by a family is divided into a number of shares on account of division or alienation, such divided or alienated part is never reckoned as an independent share but only as a fraction or sub-fraction of the original share; conversely also where one family acquires one or more shares of other families, that family is said to own so many shares [4].

Vellaler Settlement.

There is a tradition relating to the settlement of Vellalers in Tondamandalam, now comprising the Districts

[1] *Revenue Selections* I. 909; *Vizagapatam Dt. M.* 112.
[2] *Tanjore Dt. M.* 400; *Mirasi Papers*, 42, 376.
[3] *Mirasi Papers*, 42.
[4] *Mirasi Papers*, 43, 377.

of Chingleput, North and South Arcot. Originally Tondamandalam was covered by a vast jungle, called *Dundacaranium* inhabited by the *Karambars*, a pastoral and half savage tribe, but sufficiently advanced towards civilisation to have chiefs of their own, each of whom resided in a fort having a district of greater or less extent under his jurisdiction. There were twenty-four such tribes who divided this tract of the country and each had a head or chief who resided in his fastness called a *cotum*. But *cotum* was also applied to the tract of territory belonging to them and resembled the palayams in Southern India[1]. For reasons which are not known, whether due to the trouble given by them or the conquering spirit of the Chola Rajas, *Adanda Chackravarti* led an expedition into their territory and exterminated the pastoral tribe and settled on the land agriculturists to develop it. The original settlers having found the clearance of land difficult came back and the Chola king thereafter settled a colony of Vellalers, and on account of the uninviting character of the country devoid of all natural sources of irrigation to which the settlers who were taken from other fertile districts were accustomed, conferred on them certain privileges which they had not in their own country. This tradition is accepted by *Mr. Ellis* [2], *Mr. Place*[3], *Mr. Crole*, the author of Chingleput District Manual [4], *Mr. Baden Powell*[5] and by *Sadasiva Ayyar J.* in *Chinnan* v. *Kondam Naidu*[6]. But it was doubted by *Sir Thomas Munro* who was of opinion that the colonization spoken to in the manner described was not possible in those days; and according to him the *mirasi* tenure with all its incidents was a gradual growth in a country long peopled and cultivated, and originated in local circumstances [7]. The settlers were called *Kaniatchidars* in Tamil, *Swastiumdars* in Sanskrit and *Mirasidars* after the Mahomedan conquest. They were peasant proprietors and on the establishment of a Tamil village all the lands therein belonged to them as a collective body who had equal rights as

1 *Mirasi Papers*, 39.
2 *Ibid*, 230.
3 *Ibid*, 39.
4 217.
5 *Baden-Powell Vill. Com.* 379.
6 26 M.L.J.169.
7 *Mirasi Papers*, 432.

between themselves but formed an exclusive body as regards others [1].

Agrahara Vadiky and Pandara Vadiky.

Mirasi villages in the present Districts of Madura, Ramnad and Tinnevelly were of two classes, *Agrahara Vadiky* and *Pandara Vadiky* [2]. *Agrahara Vadiky* took its name from its being granted to a community of Brahmans, chiefly by rulers and other persons of rank and opulence. It was a village in which the absolute proprietary right was vested in Brahmans. The village was divided into pangus and carays and the right to each caray was recorded in the village *kosham i.e.* register of village lands. But it did not carry with it the right to a specific plot of land in perpetuity ; and a new distribution of lands was made at stated intervals; in fact the form of enjoyment was *kareiyedu*. The village was common to the whole body of proprietors and each proprietor could sell, mortgage or transfer his share in any way he pleased, though it had to be assented to by the other sharers. All the sharers were jointly and severally liable for the whole revenue of the village [3].

Pandara Vadiky.

Pandara Vadiky took its name from its being granted to Sudras and was more a distinction of caste than of tenure. This was also divided into pangus and carays, which were recorded in the kosham and was subject to purchase and sale [4]. Sudra mirasi villages in South Arcot went by the name of *Manavadoo* villages [5].

Karay Villages

Villages held jointly by co-sharers in the districts of Madura, Tinnevelly, and Tanjore went by the name of *karay* villages. The co-sharers in these villages were known as *karaikarans*, and beyond the fact that both the *mirasi* and *karay* villages were held in shares, the rights of the sharers therein were not similar [6]. As pointed out by Mr. Nelson in the Madura District Manual [7], the origin of the *karay* tenure was due to different circumstances. It was a sort of partnership entered into by the owners of land in a village agreeing to hold their lands in

1 *Mirasi Papers*, 376.
2 *Ibid*, 78 ; 386.
3 *Ibid*, 78.
4 *Ibid*, 79.
5 *Ibid*, 483.
6 *Ibid*, 252.
7 *Part* V. Ch. I. 12.

common for the purpose of guarding themselves against the rapacity and injustice of the State and the form of enjoyment adopted was *kareiyedu*. This kind of enjoyment in the *karay* form was also adopted when a village was held by different members of the same family so as to ensure enjoyment of good and bad by all alike. In some villages lands are called *karay* lands to denote those which were in cultivation at the original formation of the village, as distinguished from those which were subsequently brought into cultivation.

Forms of holding of mirasi villages. Samudayam or Pasankarei.

Passing to the forms in which *mirasi* villages were held, the first form we come across is that known as *Samudayam* (in Sanskrit), or *Pasankarei* (in Tamil), known also as *Sumohi*. It comprised two varieties, ***absolute Samudayam***, or *Samudayam* properly so called, and *Kareiyedu*. Under the former the mirasi of the entire cultivated area belonged to the whole body of *Mirasidars*, each in proportion to the share or parts of the share he held, being entitled to share in the common property [1]. The lands were cultivated either by joint stock and labour, cattle and implements, the produce being shared by the members of the village community or mirasidars according to their respective shares, or separately by each mirasidar but the produce from all the lands being subsequently shared by all of them according to their shares. The only separated land which they could hold was the garden or backyard attached to their houses and situated within the limits of the village site. Under the latter form or

Kareiyedu.

Kareiyedu the lands were temporarily cultivated in separate shares by the co-sharers and were subject to redistribution at stated periods as may be agreed upon, usually from five to thirty years so as to give good and bad in turn to each [2]. This form appears to have been prevalent in comparatively recent times[3]. When lands of a village were held in *kareiyedu*

[1] *Mirasi Papers*, 95, 378; *Tanjore Dt. M.* 408; *North Arcot Dt.* M. 89; *Baden-Powell*, L. S. B. I. III. 118, *Ibid*, Vil. Com. 369.

[2] *Tanjore Dt. M.* 409; *Baden-Powell*, L.S.B.I. III. 118; *ibid*, *Vill. Com.* 369; *Saminathaiyan* v. *Saminathaiyan*, 4 M.H.C.R. 153 (159).

[3] *Venkatasami Nayakan* v. *Subba Rao*, 2 M.H.C.R. 1; *Anandayyan* v. *Devarajayyan*, 2 M.H.C.R. 171; *Saminathaiyan* v. *Saminathaiyan*, 4 M.H.C.R. 153.

and were mortgaged and subsequently the village became *atchandrarkam*, the mortgagee can get back only the area having regard to good and bad[1]. The incident of the *Samudayam* tenure, both in the *absolute* and *kareiyedu* forms was the joint liability of share-holders for Government revenue[2]. This tenure evidently represented the earliest or initiary stage of agricultural institution. A body of persons who settled in a village with no previous knowledge of the character of the lands therein would have preferred the *absolute Samudayam* tenure first, and then *kareiyedu*. Both forms, however, gave no inducement to individual enterprise. The owners were competent to make an alienation of their lands by way of mortgage, sale or otherwise [3].

Palabhogum, Atchandrarkam or Arudikarei.

When, however, the members of the community acquired knowledge of the character of the lands, or realised by experience that individual enjoyment gave better scope for improvement, they gave up this periodical distribution of lands and held them in perpetuity. Thus we come to the second form of holding, known as *Palabhogum*, *Atchandrarkam* (in Sanskrit) and *Arudikarei* in Tamil. In this form the lands were held in severalty with individual ownership and individual liability for the payment of Government revenue. This form was, to all intents and purposes, ryotwari tenure [4].

Ekabhogum or Ejaman Gramam.

In some districts all the lands in the village have become vested by purchase or other means in a single individual, when it is known as *Ekabhogum* or *Ejaman Gramam* [5]. In the District of Tanjore these villages were mostly hamlets or detached portions of villages so called. Under the former native Governments, every mirasidar of any importance obtained the sanction of the ruling power to constitute his individual holding, however small, into a separate village called after his own or other favourite name [6].

1 (1861) S.D. 118.
2 *Tanjore Dt. M.* 411; *Mirasi Papers*, 94.
3 *Mirasi Papers*, 95, 96, 181, 205.
4 *Mirasi Papers*, 95, 379; *Tanjore Dt. M.* 408; *North Arcot Dt. M.* 89, *Baden-Powell*, L.S.B.I. III. 118; *Ibid*, *Vill. Com.* 369.
5 *Mirasi Papers*, 95, 379; *North Arcot Dt. M.* 89; *Tanjore Dt. M.* 408; *Baden Powell* L.S.B.I. III. 118; *Ibid*, *Vill. Com.* 368.
6 *Tanjore Dt. M.* 480.

Special privileges of mirasidars of Chingleput.

The Mirasidars of Chingleput enjoyed certain privileges which were not enjoyed by the mirasidars of other districts, such as (1) *Tunduwaram* or *Swamibhogum*, a fee or percentage of the produce on lands granted by Government to non-mirasidars, and (2) enjoyment by them of a certain portion of arable land held altogether tax free, known as *Cawny*, *Grama* or *Oor* manyam [1].

Tunduwara- and Swamibhogum.

Though *Tunduwaram* and *Swamibhogum* are synonymous, there is a practical distinction between the two. *Tunduwaram* is a certain portion of the kudivaram fixed by custom or agreement, paid by the *payakarris* from the produce of all lands cultivated by them to the mirasidars; sometimes in grain, sometimes in money and *Swamibhogam* is the rent paid for the land held in farm from the mirasidar for fixed period [2]. *Tunduvaram* literally means a bit of share, and *Swamibhogum* the share paid to the swami or proprietor. Both denote the part taken out of the kudivaram and paid to the mirasidar by the tenant in recognition of the legal right of property in the former in addition to the melwaram or royal share paid to government [3].

Mirasidars' present position.

Whatever might have been the original position of the *mirasidars*, their present position is described in the *Manual of Administration* [4] thus: Mirasi rights are sometimes more than the preferential right to occupy new land and they are recognised by Government. Nearly all that remains now of the special rights of the old communal oligarchies is the claim by certain hereditary mirasidars in the Chingleput District to fees upon waste which may be hereafter brought under cultivation, and upon lands now occupied by non-mirasidars which may hereafter be thrown up and again re-occupied under the darkhast rules. These fees otherwise called Swatantrums, were formerly taken from the gross produce before the division of the crop, and were then paid to the mirasidars both by the ryots and by the Government. They are now made payable entirely by the ryots, liberal allowance having

[1] *Mirasi Papers*, 9: *Fifth Report*. II. 41; *Mirasi Papers*, 41.

[2] *Mirasi Papers*, 291. Note; *Madura Dt.* M. Part V. Ch. I. 14.

[3] *Baden-Powell, Vill. Com.* 370; *Madura Dt.* M. Part. V. Ch. I. 14; *Fifth Report*, II. 86.

[4] I. 125.

been made with these on arriving at the money rates of assessment charged on their lands. The swatantrum payable by the ryot under these circumstances is a yearly sum of two annas in each rupee of the Government assessment; this amount being held to represent the old average of 3 per cent. of the gross produce of the year. These fees are recorded by Government in the land revenue registers and their collection is left to the mirasidars themselves".

Mirasidars' right over waste.

According to the theory of the *mirasi* tenure, all the mirasidars are entitled to all the lands in the village including waste. But their right to waste was infringed upon by Government and this infringement was acquiesced in by them except those in the Chingleput District. While it may be taken as settled in other districts except Malabar that the Government is *prima facie* the owner of all waste, in Chingleput in what are known as *mirasi* villages, opinion is divided as regards the rights of the Government therein. In the year 1814 the Government of Madras prepared a set of questions to be sent to the Collectors of districts to be answered by them, so as to elucidate generally the rights of mirasidars, and question No. 2 was, "Does mirasi right extend to waste lands" [1]. The most elaborate and learned reply was that sent by *Mr. Ellis*, the Collector of Madras, who warmly supported the mirasidars. He sent along with his reply that of *Mr. Sankarayya*, his former Sheristdar. The Board of Revenue in their letter to Government dated 17th April 1817 forwarding *Mr. Ellis*' reply stated that "the difficult and intricate subject of mirasi right has been discussed in these papers with much ability and learning, and the information they contain is, in the opinion of the Board, generally so correct and important, that they beg leave to recommend that the enclosures to Mr. Ellis' letter be printed, for the use of the service at large" [2], and agreeably to that desire, the Government ordered its printing [3]. The Court of Directors objected to the adoption of this course, as it would have the effect of imposing the

[1] *Mirasi Papers*, 156.
[2] *Ibid*, 174.
[3] *Mirasi Papers*, 174.

opinion of *Mr. Ellis* on the service as the authoritative opinion of the Government [1]. The proceedings of the Board of Revenue, however, show that out of the twenty-three Collectors who were addressed, only thirteen sent in their replies; and that, as *Mr. Ellis* dealt with the question elaborately, his reply was asked to be printed, but that no instructions were issued to the Collectors to consult it for their guidance [2]. The Collectors of Madura [3] and Tinnevelly [4] stated generally that the mirasi right extended to waste. *Mr. Ellis* stated that the mirasi right, wherever it existed, extended certainly to waste, but that it was limited by the nature of the waste. In the *sheykal carambo* the mirasidars' rights were similar to those under which they held the general warapat or taxable lands of the village, and they might cultivate it whenever their means permitted; and in the *anadi carambo* they had no right of cultivation, though they possessed the exclusive right of cutting firewood, working quarries etc., but they could not claim to break up the common used for pasturage, or to cut down productive trees, except with the consent of the Sirkar [5]. *Mr. Sankarayya* stated that, as waste lands were included in the *grama-taram*, all lands comprehended under the terms, nuttum, eri, poramboke, tarisu, belonged exclusively to the mirasidars [6]. He, however, made no distinction between *sheykal carambo* and *anadi carambo*. *Mr. Ellis* stated in forwarding the reply of *Mr. Sankarayya* that, wherever they differed, the view of the latter was to prevail [7]. Therefore the distinction made by *Mr. Ellis* in the mirasidars' rights in respect of *sheykal carambo* and *anadi carambo* can have no force. Even the restriction on the cultivation of *anadi carambo* might have been due to other causes, for *Mr. Baden-Powell* [8] points out that village custom may have early imposed on the co-sharers themselves a prohibition against cultivating such plots, stopping such roads by making them into fields and the like.

1 *Mirasi Papers*, 423.
2 *Ibid*, 427.
3 *Ibid*, 158.
4 *Ibid*, 161.
5 *Ibid*, 184.
6 *Ibid*, 219.
7 *Ibid*, 173.
8 *Village Com.* 365 note (1).

Recognition of the right by authorities.

The right of the mirasidars to waste was recognised by the *Board of Revenue* in their proceedings dated 5th January 1818 [1] in which they adopted the views of *Mr. Ellis*; by *Mr. Smalley*, the Collector of Chingleput [2]; and repeatedly by the *Madras Government* in their proceedings dated 11th February 1856 [3], in their letters dated 22nd December 1856 [4] and 5th June 1857 [5]. Finally the *Court of Directors* directed that mirasi rights should not be interfered with [6]. *Mr. Baden-Powell* in his Land Systems of British India [7] and Village communities [8] and *Sir Henry Maine* [9] take the same view.

Denial of the right by them.

Their right to waste was at first denied by *Sir Thomas Munro* in a minute drawn by him as Governor of Madras [10]. He recorded that, whatever might be their right, it was good only against strangers and not against Government who had the absolute right of disposing of the waste as it pleased. Acting on this view, the Board of Revenue (whose *personnel* now apparently differed) in their proceedings dated the 15th August 1839 [11] stated that the rights of the mirasidars over immemorial waste lands were confined to the pasturing of the cattle, the cutting of firewood, etc., and similar common privileges, but these must give way to any proposition ensuring the extension and realization of the public revenue, and expressed the same view in their proceedings dated 9th September 1841 [12] and 14th May 1856 [13].

Recognition by Courts.

The right of the mirasidars over waste was recognised by the *Court of Udalut of Chingleput* in Cause No. 90 of 836[14] which was affirmed on appeal by the *Provincial Court* in A. S. 46 of 1840 [15] in which the view of *Mr. Ellis* in preference to those of *Sir Thomas Munro* were upheld. In Special Appeal No. 108 of 1844 it was held by the Sudder Court [16] that the mirasidars were the acknowledged

[1] *Mirasi Papers* 377.
[2] *Ibid*, 403.
[3] *Ibid*, 534.
[4] *Ibid*, 553.
[5] *Ibid*, 558.
[6] *Ibid*, 556.
[7] III. 119,
[8] 365.
[9] *Vill. Com.* 101.
[10] *Mirasi Papers*, 438.
[11] *Ibid*, 452.
[12] *Ibid*, 472; See *Mr. Freese's letter*, *Ibid* 452.
[13] *Ibid*, 538.
[14] *Ibid*, 456.
[15] *Ibid*, 462.
[16] *Ibid*, 486.

hereditary proprietors of the soil and that they could recover it from a tenant who built upon it, even though he paid tax for it to Government. In the Full Bench case of *Sakkaji Rao* v. *Latchmana Goundan* [1] it was observed that "there has been no law depriving the mirasidars of any of their privileges they may have customarily enjoyed. On the other hand in the Regulations, the intention of the Government is declared to respect the privileges of land-holders of all classes," and held after going through all the proceedings of the Government, and the Board of Revenue, and the correspondence on the subject that "it can by no means be laid down as a uniform rule that the mirasidars are entitled to dues from cultivators holding lands within the area of the mirasi estate under pattas from the Government. To avoid injustice, where the right is denied, there should then be an inquiry whether by custom it prevails upon the estate, or, if there are not sufficient instances on the estate to afford grounds for a decision, on similar estates in the neighbourhood."

Denial by them.

As against the view conceding to the mirasidars the right to waste, it was held in A. S. 100 of 1849 on the file of the *Chingleput Civil Court* that they were not entitled to levy swatantrums from the payakarris who did not hold under them but under pattas from Government [2]. In *Sivanantha Naiker* v. *Kattu Ranga Chariar* [3] it was held that the rights of the mirasidars over immemorial waste (apart from their preferential right to cultivate) were confined to grazing, cutting firewood and similar common privileges, and that those rights were liable to be extinguished by the Government alienating the land. The question of the mirasidars' right over waste was raised in the case reported in (1914) M. W. N. 537 where the learned Judges *Sankaran Nair, J.* and *Sadasiva Aiyar, J.*, differed in opinion and it is now pending judgment before a Full Bench (*Wallis C.J.*, *Ayling* and *Kumarasami Sastriar, JJ.*)

---

1 2 Mad. 149; See also *Natesa Gramani* v. *Venkatarama Reddi*, 30 Mad. 510.

2 *Mirasi papers*, 484.

3 26 Mad. 371.

CHAPTER IV.

THE RYOTWARI TENURE.

The Amani System.

Before dealing with the *ryotwari tenure* and its incidents, it will be useful to have a brief description of the systems adopted for the collection of revenue before its general introduction in the Presidency. The system which was most prevalent in many parts of the Presidency from very remote times was that known as *amani.* It denotes the collection of revenue direct by Government through its village servants without the intervention of farmers or zemindars, either by taking a share of the produce or by the collection of money rents. In the former case, it is known as the *asara* or *waram* (*i. e.*, sharing) system and this system was loosely called *amani. Ryotwari* system is really *amani* system, as the settlement in both cases is made with individual ryots, with the difference that in the former case the settlement purports to be made on the basis of dividing the net instead of the gross produce [1]. The word *amani* is also usually applied to lands in the immediate possession and management of revenue officers.

The Appanam System.

The *appanam* system was prevalent in the Districts of Bellary, Cuddapah and Kurnool. The word *appanam* means "any taxed lands, especially lands highly assessed, which are required to be held by cultivators, who, as an equivalent, hold other lands on favourable terms, or rent free"[2]. This system grew out of the ancient usage of the country under which the Patels and the Reddies were held responsible for keeping up the cultivation of their villages to the standard, and were thus saddled with a larger extent of highly assessed land than they would voluntarily have

[1] *Man of Adminis*, I. 136.

[2] *Wilson*, 29.

retained, their office being endowed with a larger extent of service inam land in consideration of their liabilities than would have been attached to it, had they merely ordinary duties to perform. Under this system when the ryots relinquished their lands, the Patels were bound to provide for their cultivation and were not allowed to reduce their own holdings by relinquishment [1].

Dittum.

Dittum means arrangement or settlement. It was, in theory, an account taken by the Indian revenue servants, at the commencement of the cultivating season of the lands that the ryots intended to cultivate, and what portion of the previous year's holdings they intended to give up. In practice, however, in order to make a great show on paper, it was accompanied by inducements and injunctions to take up larger extents of lands than the ryots had the means of cultivating, and the ryots used to consider themselves obliged to cultivate what was settled upon them [2].

The Olungu System.

Olungu and *Motafysal Systems* were prevalent in the districts of Tinnevelly and Tanjore. The former was complicated. It consisted of the commutation of an assumed or estimated quantity of produce at a standard or fixed price, modified by the current price of the day. The ryots had the choice between this system and a reversion to the sharing system [3]. The commutation rate was founded on the price of past years, but all increase of price of over 10 per cent. above the standard was added to the demand, while all decrease of more than 5 per cent. under the standard was remitted to the ryot [4].

The Motafysal System.

The *Motafysal system* was a modification of the *Olungu* system, the variations of the conversion rate according to the current price being abandoned and the standard Olungu price adopted once for all at an unchangeable conversion rate [5].

The Pat' hak System.

The *Pat' hak system* was prevalent in Tanjore during the administration of the Hindu Rajas. Under this system the

[1] 1 *Rev. Reg.* 41; *Bellary Dt. M.* 182.

[2] *Coimbatore Dt. M.* 123; *Bellary Dt. M.* 181; *South Arcot Dt. M.* 271.

[3] *Tinnevelly Dt. M.* 73.

[4] *Man of Adminis.* I. 136; *Tinnevelly Dt.M.* 75.

[5] *Tinnevelly Dt. M.* 75.

Government contracted with a middleman designated *Pat' hakdar* for the revenue of a group of villages, and in some cases, for each individual village. A joint liability on the part of all the landholders was a feature of this system [1]. This system was introduced into Tanjore by Bava Pandit, the able and faithful minister of Tulzaji, in order to revive industry and to bring under cultivation the villages which had been laid waste by the invasion of Hyder. Bava united into small *pathakams* a village which had most suffered in the war with another contiguously situated which had been less exposed, by this means transferring the cattle, implements of husbandry and resources of each to their mutual relief; a principal landholder selected by the inhabitants and approved of by the sirkar was considered as the intermediate agent of both and denominated the *Pat' hakdar* from whom the sirkar received a kabuliat binding himself for the cultivation of such of the lands as might be previously agreed on between him and the cultivators [2]. This system was abolished in *fasli* 1209 [3].

The Pat'hak System.

Under the *pattukattu system*, whenever a ryot brought into cultivation any land, he could not at any time relinquish it [4]. Closely resembling this system was the *taram bharti* system. Under this system it was endeavoured to prevent ryots from assigningtheir highly assesesd lands and cultivating only those that were lightly assessed; ryots who so assigned their heavily assessed lands being charged for one year the assessment of the lands so assigned on their more lightly assessed ones which were cultivated.

The Pattu-kattu System

The Taram bharti System.

The term *veesabuddy* is applied in the Ceded Districts and Telingana to a coparcenary village, of which the lands or profits are allotted by sixteenths and fractions of sixteenths, among the hereditary proprietors [5]. The *veesabuddy* system is described by the Board of Revenue thus [6]: "Under this system, a fixed sum of money was assessed on the whole village for one or more years. A certain number of the most

The Veesa-buddy Syst em.

[1] *Tanjore Dt.* M. 411; *Mirasi Papers*, 92.
[2] *Tanjore Dt.* M. 469.
[3] *Ibid*, 492.
[4] *Trichinopoly Dt. M.* 191.
[5] *Wilson*, 549.
[6] *Revenue Selections*, I. 910; *Vizagapatam Dt. M.* 114; *Nellore Dt. M.* 270.

respectable ryots became answerable for this amount, each being responsible for his own separate portion thereof, and all for each other, and the lands were divided by lot, as in the samudayam villages of the Tamil country, the portion of land to be occupied by each being determined by the proportion of the rent for which he became responsible. Thus, if ten ryots obtained their village for three years at a *veesabuddy* rent of one hundred pagodas, the first becoming responsible for twenty, the second for forty, and the other eight for five pagodas each, the lands of the village would be divided into ten equal shares, the first would be entitled to two of these, the second to four, and each of the others to half a share; and from this division of the lands into shares the settlement took its name of *veesabuddy*, namely, a village settlement *by shares* in ready money". *A veesabuddy* settlement is identified with the settlement by fields or their individual cultivators, and is the same as the ryotwari settlement [1]. Where this system prevailed, it was customary for the residents of the village, periodically once in five or six years,to exchange all their lands so as to secure an equal division of the soil, good and bad [2]. Where it was for a year, the ryots generally retained the same lands but the assessment on them was raised every year, the revision being made by the tenants themselves, and to ensure its impartiality, the peculiar practice of challenging was introduced, whereby any ryot who considered that his own holding was overassessed, and that of his neighbours under assessed, demanded that the latter should be made over to him at an increased rate which he named. If the ryot in possession consented to pay the enhanced rate, he retained the land, and in that case a proportionate reduction was made in the assessment of land held by the complaining party. If the ryot in possession refused to agree to the enhanced demand, he was compelled to give up the land to the complaining party who took it at the higher rate[3] .

[1] *Wilson*, 549.
[2] *Nellore Dt. M.* 270.
[3] *Godavery Dt. M.* 314.

Ryotwari or Kulwar system.

Ryotwari or *Kulwar* system was first introduced into the British possessions by *Captain Read* in the Brahmahal country and Salem for the settlement of which he was specially deputed by the then Governor-General, *Lord Cornwallis*. The distinguishing feature of the *ryotwari* system is that the State is brought into direct contact with the cultivators and collects the revenue through its own village officers without the intervention of intermediate agents, such as farmers or zemindars, and its object is the creation of peasant proprietors. All the increased income derived from the extension of cultivation goes to the State. Under this system the Government share of the produce is commuted into a money payment and the principle on which such commutation is made is known as the half net principle [1]. It is described by the Board of Revenue thus [2]: "In carrying out the settlement with reference to the foregoing principles, the Settlement Department divides the soils into certain classes with reference to their mechanical composition, sub-divides them into sorts or grades with reference to their chemical and physical properties and other circumstances affecting their fertility, and attaches a separate grain value to each grade after numerous examinations of the actual outturn of the staple products in each class and sort of soil. The grain value is then converted into money at the commutation price, based generally on the average of the twenty non-famine years immediately preceding the settlement, for the whole district, with some abatement for traders' profits and for the distance the grain has usually to be carried to the markets, and from the value of the gross produce thus determined, the cost of cultivation and a certain percentage on account of vicissitudes of season and unprofitable areas is deducted, and one-half of the remainder is the maximum taken as assessment or the Government demand on the land. After this, soils of similar grain values, irrespective of their classification, are bracketed together in orders called *Tarams*, each with its own rate of assessment. These rates are

[1] *Man of Adminis* I. 121. [2] *S. O.* I. 2.

further adjusted with reference to the position of the villages in which the lands are situated and the nature of the sources of irrigation. For this purpose villages are formed into groups, in the case of dry lands, with reference to their proximity to roads and markets, and in the case of wet lands, with reference to the nature and quality of water-supply. This accounts for different rates of assessment being imposed on lands of similar soils, but situated in different groups or under different classes of irrigation." The classification thus originally made is known as *ain taram* [1]. Ryotwari lands are known as *taraf* lands in the Tanjore District and as *ayan*, *sirkar*, or *Government* lands in the other parts of the Presidency.

Proposal for the fixing of revenue permanently on ryotwari lands.

In his report on the permanent settlement of the Ceded Districts on ryotwari principle, *Sir Thomas Munro* advocated the settlement permanently of the revenue under the ryotwari system [2], but as both the Board of Revenue [3] and the Government of Madras [4] were against the proposal, it was dropped. Again in the year 1862 the Secretary of State for India sent out orders directing that "a full, fair and equitable rent must be imposed on all lands under a temporary settlement," and that, wherever this had been done, a permanent settlement of the revenue might be made. This measure was considered to be calculated to accelerate the development of the resources of India and to ensure in the highest degree the welfare and contentment of all classes of His Majesty's subjects. This proposal was supported by the Board of Revenue, but when the Madras Government solicited the orders of the Secretary of State for India to declare the grain valuations imposed by the Settlement Department permanent, he refused his sanction in 1869 as the scheme involved an unjustifiable sacrifice of the future resources of the State [5]. Accepting the decision of the Secretary of State for India and attempting at the same time to minimize the evils incidental to periodical revisions of assessment,

[1] *Wilson*, 14.
[2] *Fifth Report*, II. 646.
[3] *Ibid*, II. 574.
[4] *Ibid*, II. 578.
[5] *Srinivasa Raghava Iyengar's Progress*, 205, 206

the Government of India has ruled in 1883 that, when once the soil has been carefully classified, there should be no re-valuation when the assessment has to be revised, and that the revision of the assessment should be effected under such principles and based on such date as will enable any person investing money in landed property or in improvements to land, to forecast with tolerable precision and without official aid, the enhancement of revenue to which he will in future be subject, in order that "certainty of assessment might become one of the inherent attributes of agricultural property" [1]. Under the rules at present in force, settlements of revenue are made for such periods as the Government may fix for each district which will be notified by the Collector in the District Gazette [2], and are now usually made once in every thirty years [3].

Suits regarding assessment.

The right to levy assessment being one exercised by the Government in the exercise of its sovereign prerogative, Civil Courts are precluded from taking cognizance of any suit relating to rates of assessment [4], though they have jurisdiction to decide whether or not the land or person is at all under liability to be assessed to land revenue [5]. A person who claims to hold land from Government without liability to pay assessment must show some grant exempting him from the payment of the ordinary assessment, and no exemption can be claimed without a grant or exemption in express words [6].

Ryot.

The person with whom the Government enters into direct dealings under the ryotwari system is called the ryot. The word ryot is a corruption of the Arabic word *Raynt* which signifies literally "pasture" or "a herd of cattle" and was introduced into India after the Mahomedan con-

[1] *Srinivasa Raghava Iyengar's Progress*, 213.
[2] *S. O. I.* 4.
[3] *Man of Adminis*, I. 121.
[4] *Per Bhashyam Ayyangar J* in *Madathapu Ramayya* v. *The Secretary of State*, 27 Mad. 386 (396); *The Secretary of State* v. *Venkatapatha Raju*, 23 M.L.J. 746; *Rama Rao* v. *The Secretary of State*, 1 L.W. 339: (1914) M.W.N. 388.
[5] *Sri Uppu Lakshmi Bhayamma Garu* v. *Purvis*, 2 M.H.C.R. 167; per *Bhashyam Ayyangar J.* in *Madathapu Ramayya* v. *The Secretary of State*, 27 Mad. 386 (396); *The Secretary of State* v. *Ram Ugrah Singh*, 7 All. 140; *Government of Bombay* v. *Sundarji Savram*, 12 Bom. H. C. R. app. 277.
[6] *Hanumanulu Pantulu* v. *The Secretary of State*, 36 Mad. 373: 22 M.L.J. 445.

quest. It is applied to subjects at large, either as being more commonly employed in the pasturing of cattle, or as being themselves cattle or sheep, and the special care of their protectors or governors, who, by the same figure of speech, are sometimes designated by the kindred name of *Raee* or shepherd [1].

Patta.

When a ryot is first put into possession of land, he is furnished with a document called the patta, which is liable to revision at each annual settlement, called Jamabandi. The patta is only a mere bill issued to the ryot, so that all concerned may know the amount of assessment payable and the instalments by which it is to be paid, and is not, nor does it purport to be, in the nature of a grant or conveyance [2]. A patta is not evidence of title [3], but is only evidence of possession[4].

Pattadar's rights.

A registered pattadar may, so far as he is concerned, alienate, sublet, mortgage, sell, give, bequeath or otherwise dispose of the whole or any portion of his holding [5]. Section 2 of Regulation XXVI of 1802 requires the Collector of each district to keep registers for registering the landed property paying revenue to Government and to register all transfers of lands from one proprietor to another and section 3 provides that transfers without such registry are not valid in the Courts of Adawlut and do not exempt the persons in whose names the estates stand, from paying the revenue due from such lands. It has been held that transfers without registry in the Collector's books are valid as between the parties and are invalid only as against Government for the purpose of claiming exemption from liability to revenue [6]. Therefore in the absence of such registry on an alienation, the registered pattadar is liable to be proceeded against for arrears of revenue even on the lands alienated under the Revenue Recovery Act. When he makes an alienation, and

[1] *Baillie's Land Tax*, XXI.

[2] *Freeman* v. *Fairlie*, 1 M. I. A. 305 ; *per Bhashyam Ayyangar J* in *Kasturi Reddi* v. *The Secretary of State*, 26 Mad. 268 (272) ; *per Benson J.* in *Mutnuveera Vandayan* v. *The Secretary of State*, 29 Mad. 461 (467).

[3] *Mangamma* v. *Timmapaiya*, 3 M.H.C.R. 134 ; *Subramanian Chetty* v. *Mahalingaswami Sivan*, 33 Mad. 41 : 19 M. L. J. 627 (F. B.)

[4] *Ibid.*

[5] *S. O.* 28 (2).

[6] *Mangamma* v. *Timmapaiya*, 3 M. H. C. R. 134.

it is registered in the Collector's register, the transferee takes the land subject to the payment of the arrears of revenue or other legal charges due on it and subject to the same condition and obligations, as the transferor held it under [1]. The pattadar is not to be charged for any increased produce due on account of improvement made by him but cannot claim, as of right, reduction of assessment on account of the space occupied by such improvement [2]. He is liable to pay the fixed assessment on it whether cultivated or not, waste or fallow [3]. Section 48 of the Revenue Recovery Act states that a sale for arrears of revenue conveys to the purchaser the land free of all prior encumbrances.

Minerals.

The registered pattadar is entitled to work mines in his holding, and in such a case, is liable to pay a separate assessment in addition to the usual assessment for surface cultivation [4].

Trees.

The pattadar is entitled to the trees standing on his holding and is not to be separately charged therefor. Separate pattas are not now issued for trees, except in the District of Tinnevelly, and where such pattas have been issued, they are cancelled and the tree pattadar is to make his own arrangements with the land pattadar if the two are different [5]. The interest of the tree pattadar is an interest in land and he has more than a mere right of access to the fruits of trees. He has an interest during the continuance of his patta in the tree itself and in all that is necessary for the growth of the tree including the soil on which it stands [6]. The only effect of the cancellation of the tree patta is that the Government no longer makes any demand on the pattadar for revenue in respect of the trees and the land pattadar has no right to interfere with the tree pattadar's possession of the trees when it was not shown that the Government

[1] S. O. 28 (2); *Kota Subbayya Gupta* v. *The Secretary of State*, 21 M.L.J. 656.

[2] S.O. 28 (3).

[3] S.O. 28 (5).

[4] S.O. 28 (7).

[5] S. O. 18 (1).

[6] *Reference under the Madras Forest Act*, 12 Mad. 203; *Theivu Pandithan* v. *The Secretary of State*, 21 Mad. 433 (F. B.)

resumed possession of the trees or made any grant of them to the land pattadar [1].

Relinquishment.

A pattadar can relinquish the lands in his holding or any portion thereof provided the relinquished part is accessible, and the relinquishment is in writing and made sufficiently early in the season to enable another ryot to commence cultivation upon it [2]. After relinquishment, it becomes the property of the Government which it can dispose of in any way it likes. Where, at the request of some ryots certain land, occupied by them as exempted from assessment, and classified as gramanuttum, the ownership or title of the ryots in the land is extinguished, and when it has been classified as poramboke nuttum and is annexed to the village site, the land is at the disposal of the Government which can grant it to *bonafide* applicants for house sites [3].

Laying waste

The mere fact that the ryot laid the land waste or did not pay the revenue is no ground for resuming the land and granting it to another. The relation between the Government and the ryot can only be determined by the resignation or abandonment of his holding or by the course of proceedings prescribed by Act II of 1864 [4].

Rights and liabilities of Government.

It is one of the most important functions of the Government in India to construct new works of irrigation and to repair old ones according to means and circumstances [5]. It has at all times assumed itself, and has the right, in the interests of the public, to regulate the distribution of water, subject to the right of the ryotwari holder to whom water has been supplied, to continue and to receive supply

[1] *Sengoda Goundan* v. *Raju Goundan*, 36 Mad. 48: 22 M.L.J. 201.

[2] S. O. 33.

[3] *Mahammad Meera Mohideen* v. *Secretary of State*, 13 M. L.J. 269.

[4] See *ante* Ch. I. 23; *Rajagopala Iyengar* v. *The Collector of Chingleput*, 7 M. H.C.R. 98; *The Secretary of State* v. *Nunja*, 5 Mad. 163; *The Secretary of State* v. *Ashtamurthi*, 13 Mad. 89 (116); *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299 (303); *Pullanapally Sankaran Nambudri* v. *Vittil Thalakat Muhomad*, 28 Mad. 505: 15 M.L.J. 416; *Karunakara Menon* v. *The Secretary of State*, (1911) 1 M. W. N. 54. A contrary view was taken by the majority of the Full Bench (*Morgan* C. J. and *Holloway* J., *Innes* J diss.) in *Fakir Mahomed* v. *Tirumala Chariar*, 1 Mad. 205.

[5] Per *Subrahmania Ayyar* J in *Sankaravadivelu Pillai* v. *The Secretary of State*, 28 Mad. 72 (78); *Fischer* v. *The Secretary of State*, 32 Mad. 141 (155).

as is sufficient for his accustomed requirements [1]. It has been held that this right can be received even in those portions of natural rivers passing through proprietary estates [2] as its exercise does not depend on the ownership of the bed of the stream, but a contrary view has been taken by *Sankaran Nair, J.*, in *The Secretary of State* v. *Janakiramayya* [3]. But this right does not include a right to flood a man's land because, in the opinion of the Government, the erection of a work which has this effect is desirable in connection with the general distribution of water for the public benefit [4]; nor does it extend to disturb existing arrangements to the prejudice of any ryot [5]. The position of the Government in regard to liability for damages caused to individuals by such irrigation works has been compared by the Privy Council in *The Madras Railway Company* v. *The Zemindar of Karvetnagar* [6] to that of persons acting under statutory powers. It is not bound to repair irrigation works wherever they require repair and a ryotwari land-holder has no right to damages against the Government in respect of loss incurred by him owing to failure of water caused by such non-repair [7].

Ryot's right to water,

The ryot has no right that water should be supplied to him through a particular source, and the Government has the right to alter the sources, means, works, etc., from or by which the water for irrigation is supplied to the ryot entitled thereto, so long as his right to water is not prejudically affected so as to cause real damage [8]. A ryotwari proprietor whose source of water supply is interfered with by another is entitled to an injunction restraining him from such interfer-

[1] *Ponnusawmy Thevar* v. *The Collector of Madura*, 5 M. H. C. R. 6; *Krishnayyan* v. *Venkatachalla Mudali*, 7 M. H. C. R. 60; *Ramachandra* v. *Narayanasami*, 16 Mad. 333; *Sankaravadivelu Pillai* v. *The Secretary of State*, 28 Mad. 72; *Fischer* v. *The Secretary of State*, 32 Mad. 141; *Nynappa Servai* v. *Veeran*, 32 Mad. 423.

[2] *Fischer* v. *The Secretary of State*, 32 Mad. 141.

[3] 37 Mad. 322.

[4] *Sankaravadivelu Pillai* v. *The Secretary of State*, 28 Mad. 72.

[5] *Ramachandra* v. *Narayanasami*, 16 Mad. 333.

[6] L. R. I. A. 364; 22 W. R. 279; *Sankaravadivelu Pillai* v. *The Secretary of State*, 28 Mad. 72 (78); *Fischer* v. *The Secretary of State*, 32 Mad. 141.

[7] *The Secretary of State* v. *Muthu Veeran Reddi*, 20 M. L. J. 869.

[8] Per *Subramania Ayyar*, J. in *Sankaravadivelu Pillai* v. *The Secretary of State*, 28 Mad. 72; *Nynappa Servai* v. *Veeran*, 32 Mad. 423.

ence [1]. The right of the ryot to receive the accustomed supply of water is not based on any contract with the Government[2] though a contrary view has also been taken [3]. According to *Subramania Ayyar, J.*, it is of the nature of a right *in rem* [4] and on this principle apparently it has been held that the persons at whose instance the Sub-Collector interfered with the source of supply to the plaintiff were held liable in damages to the latter [5] and the contrary has been held in *Chinnappa Mudaliar* v. *Sikka Naikan* [6].

Right of cultivation.

Ordinarily the holder of a ryotwari holding has the right of cultivation also and is therefore at liberty to arrange for it from time to time either by granting leases or letting it to *purakudis* for waram or under what is usually called the *pannai* system by labourers paid by wages in grain [7]. But this being only a presumption, there is nothing to prevent the tenant of such ryot from proving that he has a permanent right of occupancy in the holding [8]. But this right being of a special character, it must be strictly proved [9].

Dharkhast grants.

Dharkhast grants are grants made by Government of lands at its disposal, consisting of waste lands or of lands relinquished or abandoned by ryots. They are regulated by rules contained in Standing Order 15 of the Board of Revenue. Various officers are empowered to dispose of various classes of Crown lands, the officers' power depending on their position and the importance of the lands. These officers specially empowered by the dharkhast rules to dispose of various classes of Crown lands either in the first

[1] *Rama Odayan* v. *Subramania Aiyar*, 31 Mad. 171.

[2] Per *Subramania Ayyar, J.* in *Sankaravadivelu Pillai* v. *The Secretary of State*, 28 Mad. 72 ; *The Secretary of State* v. *Muthu Veeran Reddi*, 20 M. L. J. 869 ; *Nynappa Servai* v. *Veeran*, 32 Mad. 423.

[3] *Chinnappa Mudaliar* v. *Sikka Naikan*, 24 Mad. 36.

[4] *Sankaravadivelu Pillai* v. *The Secretary of State*, 28 Mad. 72.

[5] *Ramachandra* v. *Narayanasami*, 16 Mad. 333.

[6] 24 Mad. 36.

[7] *Chidambaram Pillai* v. *Tiruvengadatha Ayyangar*, 7 M. L. J. 1.

[8] *Cheekati Zemindar* v. *Ranasooru Dhora*, 23 Mad. 318 ; *Veeranan Ambalam* v. *Annasami Aiyar*, 21 M. L. J. 845; *Venkatachala Goundar* v. *Rangaratnam Aiyar*, 24 M. L. J. 571 ; *Sadasiva Ayyar J.* in *Chinnan* v. *Kondam Naidu*, 26 M. L. J. 169.

[9] *Seshamma Shettati* v. *Chickaya Higade*, 25 Mad. 507 ; *Anantha Padmanatha Pillai* v. *Gopalakrishnier*, (1915) M. W. N. 277.

instance or on appeal made to them are really agents appointed by the Governor-in-Council in that behalf and the acts of the officer within the scope of his authority are binding upon the Crown as if they were done by the Governor-in-Council himself[1]. Therefore when land was granted on dharkhast by the Deputy Tahsildar and confirmed by the Deputy Collector as provided for by the rules, such a grant cannot be annulled by the Deputy Collector, the Collector or even the Governor-in-Council, in the absence of fraud, misrepresentation or mutual mistake [2]. When a grant has been obtained by fraud, the proper course for the party affected thereby is to apply to the Revenue authorities to set it aside and grant it to himself [3]. According to *Seshagiri Ayyar J.* when the assessment payable under a dharkhast grant is classified under the heading of *Shivaijama*, no property in the land comprised in the grant passes to the grantee, and it remains to be at the complete disposal of the Government [4]. The authority conferred by the Government under the dharkhast rules on the several officers not being made by virtue of statutory rules or statute, their respective action in the disposal of lands under those rules is not subject to any control other than that specially provided for by the dharkhast rules, and Regulation I of 1803, II of 1803 or VII of 1828 has no bearing on the question [5]. A grant of land was made by the Tahsildar and an appeal was preferred to the Sub-Collector under the rules, who, instead of disposing of the appeal himself, forwarded it to the Collector. The Collector made an order annulling the grant, and sent it on to the Sub-Collector who, in due course, communicated it to the grantee. It was held that, as the proper appellate officer was the Sub-Collector who did not exercise any discretion in the matter, and as the Collector had no revisional powers in grants under the rules, the

[1] *The Secretary of State* v. *Kasturi Reddy*, 26 Mad. 268.

[2] *ibid.* The Standing Order on which this ruling is based has been amended in 1908.

[3] *Annammal* v. *Venkata Raghava Chari*, 13 M.L.J. 137.

[4] *Rama Rao* v. *The Secretary of State*, (1914) M. W. N. 388: 1 L. W. 339.

[5] *Sappani Asari* v. *The Collector of Coimbatore*, 26 Mad. 742.

grantee obtained a good title to the land granted [1]. Failure to observe the formalities prescribed by the dharkhast rules before the grant is made does not invalidate it, if it is made by an officer otherwise competent to grant the same. Omission to publish the application by tom-tom in the village, get the signature of the nearest landholder and put up notices in two places does not render the grant invalid [2]; neither omission to consult the Presidency Port Officer [3], nor failure to dispose of lands in the manner indicated by the rules [4], renders the grant invalid. Where the plaintiff who had a preferential right to the land under the dharkhast rules stated that he did not want it, and on the faith of it, the defendant cleared the land of prickly pear, but subsequently the plaintiff broke faith with the defendant and obtained the land for himself, it was held that he had a good title to it [5]. Lands acquired by lessee on dharkhast during lease is not appurtenant to properties held as lessee [6].

Jurisdiction of Civil Courts in respect of dharkhast grants.

Civil Courts have jurisdiction to take cognizance of orders passed by Revenue officers under the dharkhast rules and it is not taken away merely because the grant is alleged to have been made under the dharkhast rules [7]. They have, however, to concern themselves only with those rules which define the officers competent to make such assignments of land, the extent of their authority including the description of lands which the said officers may dispose of under the dharkhast rules, and the degree of control by a higher grade officer to which the exercise of such authority is subject [8]. But they have no jurisdiction to set aside grants made by an officer competent to make them merely on the ground that

[1] *Sappani Asari* v. *The Collector of Coimbatore*, 26 Mad. 742.

[2] *Periaroyalu Reddi* v. *Royalu Reddi*, 18 Mad. 434.

[3] *Hummade Behari* v. *The Secretary of State*, 31 Mad. 264.

[4] *The Secretary of State* v. *Bundeppa* 32 Mad. 300; 5 M. L. T. 31; *Karia Goundan* v. *Raghava Reddi*, 1 L.W. 410; Cf. *The Secretary of State* v. *Krishnama Chariar*, 1 L.W. 225.

[5] *Periathambi Goundan* v. *Peria Goundan*, 23 M. L. J. 593.

[6] *Devaramani Bhogappa* v. *Pedda Bhinaka Gowd*, (1915) M. W. N. 148.

[7] *Kullappa Naik* v. *Ramanuja Chariar*, 4 M. H. C. R. 429; *The Collector of Salem* v. *Rangappa*, 12 Mad. 404; *The Secretary of State* v. *Kasturi Reddy*, 26 Mad. 268 (273, 286).

[8] Per *Bhashyam Ayyangar, J.* in *The Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268 (277); *Muthu-Veera Vandyan* v. *The Secretary of State*, 30 Mad. 461.

the formalities prescribed by the dharkhast rules have not been followed [1]; and they cannot compel the revenue authorities to make a settlement with a particular person on the ground that he is entitled to preference under the dharkhast rules [2]. There was a difference of opinion between *Sir Arnold White C.J.*, and *Benson J.* in *Muthuveera Vandayan* v. *The Secretary of State* [3], whether the civil court could interfere with the decision of the appellate revenue authority which reversed that of the inferior revenue authority on the ground of irregularity of procedure when patta had been issued. *Sir Arnold White, C. J.* held that if, in such circumstances, the Civil Court found that there was no evidence of irregularity, it eould set aside the decision of the appellate authority, though not of the inferior authority; while *Benson J.* held that it could not question the sufficiency or otherwise of the grounds on which the Revenue authorities, original or appellate, acted if they had otherwise jurisdiction, and in the Letters Patent Appeal presented on account of this difference of opinion, *Miller J.* agreed with the view taken by *Benson J* [4].

---

[1] *Periaroyalu Reddi* v. *Royalu Reddi*, 18 Mad. 434; *The Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268 (277); *Sappani Asari* v. *The Collector of Coimbatore*, 26 Mad. 742 (753, 754); *Muthuveera Vandayan* v. *The Secretary of State*, 29 Mad. 461; *Karia Koundan* v. *Raghava Reddi*, 1 L. W. 410.

[2] *Subbaraya Mudali* v. *The Sub-Collector of Chingleput*, 6 Mad 303; *Periaroyalu Reddi* v. *Royalu Reddi*, 18 Mad. 434; *The Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268; *Sappani Asari* v. *The Sub-Collector of Coimbatore*, 26 Mad. 742.

[3] 29 Mad. 461.

[4] *Muthuveera Vandayan* v. *The Secretary of State*, 30 Mad. 270.

CHAPTER V.

PERMANENTLY SETTLED ESTATES.

Hindu system of revenue administration.

Before dealing with the introduction of the permanent settlement and its effect on the existing institutions, it is necessary to have a general idea of the revenue administration that existed before that date. Under the Hindu system of Government, there were two principal officers in every village representing the king, the *headman* variously called [1] and the *karnam*. The duties of the former consisted in assigning land to new settlers, in receiving the revenue due from each occupant, and in forwarding the general business of cultivation within the limits of his jurisdiction; the latter was required to keep an exact register of the quantity of land held by each ryot, the part of it cultivated, his means of cultivation, the actual produce, the proportion he was entitled to receive from the crops, whether by agreement or usage, the share actually received from him, or the payments made by him, as well as an account of every other circumstance or transaction in his village, connected with the tenures under which the lands were held. Above them were Collectors of Districts or divisions of the province, and head or provincial officers who superintended the department of collection and receipt. Besides, the accounts in detail were transmitted to another officer appointed in each district who formed therefrom abstracts of the state of cultivation and the capacity of the several villages within his district, and the provincial or head accountant registered all sanads and territorial grants of every kind. Thus the Government was constantly and regularly furnished with every necessary information respecting its land

[1] As to which *see* ante, p. 40.

revenues and other territorial rights [1]. The Hindu kingdoms were subjected to the Mahomedan invasion which began in the eleventh century. In the struggle that ensued between the Mahomedan invaders and the Hindu Kings for supremacy, many of the revenue officers and servants of the latter began to assert independance and lay claim to the lands under their charge. In the end the Mahomedan invaders were successful, but as already remarked, their conquest of India was not complete and did not affect the internal constitution of the villages except by raising the revenue thereon [2]. It, however, led to the introduction of Persian names and terms to denote ideas connected with land tenures, though these names and terms rarely imported any fresh ideas, and the most important change it made in the administration of revenue with which alone we are now concerned, was the introduction of the system of collction of revenue through intermediate agencies.

Zemindars

The Mahomedan conquerors left that portion of the country in the possession of Hindu Rajas and their former revenue officials on their agreeing to pay a tribute or money payment and divided the rest of the country into many portions or districts and placed each of them under collectors of revenue, who at first went by the name of *Crories*, which was subsequently changed into that of *Zemindars*[3]. The word zemindar is defined by Wilson [4] to mean "an occupant of land: a landholder." In its original signification it denoted no more than a collector of revenue and did not convey any idea of lordship over, or proprietorship of, the lands under his charge [5], which was, however, asserted in the declining days of the Moghul Empire. The zemindar was merely the holder of an office whose duties, according to the terms of his appointment were to superintend the portion of the country committed to his charge, to do justice to the ryots and peasants, to furnish them with the necessary advances for cultivation and to collect

[1] *Fifth Report*, II. 11, 12.
[2] *Ante* p, 15.
[3] *Fifth Report*, II. 7.
[4] *Glossary*, 562.
[5] *Fifth Report*, II. 7 ; Mr. Campbell's paper, *ibid*, 753.

the revenue due to the Government [1]. He was strictly accountable to the Government for the amount he collected, which was not regarded as a tribute but only as a jumma or revenue calculated upon the produce of the district under his charge. As a recompense for his trouble in collecting the revenue, he was allowed a *malikana* or allowance amounting from ten to fifteen per cent on the collections he made in his district. In the case of zemindars having private lands, the *malikana* took the form of remission of revenue due on them, and in cases where they had none, or the income therefrom was insufficient to make up that percentage, it took the form of a grant of certain allotments of land, revenue free , called *Saverum* [2] and of the right to receive certain russooms or fees on the crops, and other perquisites drawn from the sayer and customs, and from the quit rent on houses, to that extent [3]. Though this was the system which was adopted in the beginning, latterly however, the Government entered into an agreement with the zemindar for the payment of a lump sum and this agreement was either for a year or for a term of years. In such cases also he was considered merely as a contractor of the revenue without any proprietary rights to the soil [4]. At every time the contract was renewed a fresh calculation of the income derivable from the lands was made and an increased jumma was stipulated for, if there was an increased income due to extension of cultivation. For the purpose of ascertaining the actual income, other officers were appointed by the state to keep an account of the cultivation, whose duty it was to furnish the *foujdar* or governor of the country with accounts and statements of the past and present state of cultivation [5]. At the same time the rights of the ryot to the soil, called *Huqi Rayaea*, were not forgotten, and in every zemindary grant it was expressly stipulated that they were to be respected by the zemindar [6].

[1] *Fifth Report*, II. 7; *see* his position described in the *Godavery Dt. M.* 245 ; *Kistna Dt. M.* 344.

[2] See the word discussed in *Lakshmayya* v. *Raja Varadaraja Appa Rao*, 23 M. L. J 624.

[3] *Fifth Report*, II. 7 ; Mr. Campbell's Paper, *ibid*, 753, 754.

[4] *Fifth Report*, II. 7.

[5] *Mr. Campbell's Paper*, *Fifth Report*, II. 777.

[6] *Ibid*.

But the office of zemindar was not strictly hereditary but like all things Indian, became hereditary; and though it was hereditary, the amount payable by him was not fixed but was liable to increase at every renewal of the contract; and the holder was dispossessed if he failed to pay punctually the jumma fixed on his *malikana*. In course of time, his hereditary right to the malikana was so well recognised that, even when he was dispossessed for non-payment of revenue, he was considered as being entitled to it. During the time of the Mahomedan government, the office was considered impartible as a matter of administrative convenience [1].

Treatment of hill zemindars and those on the plains.

In their treatment of the zemindars in the Northern Circars, the Mahomedan Government made a distinction between the hill zemindars and the zemindars on the plains. The former who were the descendants of ancient Rajas and who could not be completely subdued by them were allowed to exercise their original rights in the country and to enjoy the Government share of the produce on payment of a tribute, while the zemindars on the plains who were generally the descendants of revenue officers and who were completely subdued by them were never acknowledged as independent or tributary chiefs or as having any property in the land [2].

Defect in the system.

The inherent defect in this system of administration, especially when the jumma was compounded for a fixed sum, was the tendency on the part of the zemindars to exact as much as they could from the ryots. As long as the central power was strong enough to have its arms felt throughout the empire, the provision in the grant safeguarding the interest of the ryots was strictly observed and there was no infraction of their rights. But the Moghul empire had reached its zenith in the reign of Aurangzebe and its decline began after his death. The imperial throne was thereafter occupied by a series of indolent and incapable Emperors who cared only for pomp and sensuous pleasures. Their power was not felt in the

[1] *Mr. Campbell's Paper, Fifth Report*, II. 773.

[2] *Fifth Report*, II. 5,6; *Mr. Campbell's Paper, ibid*, 771.

provinces and their Viceroys therefore began to act on their own behalf, though their dependence on the Emperor was nominally kept up. They therefore found it in their interests to get on well with the *Zemindar-Collectors* and the result was that the latter had their own way in their dealings with the ryots. It was during this period that the zemindars began to assert claims to the soil and to make various collections from the ryots and to dispossess them if they failed to pay.

Different kinds of Zemindars.

When the Northern Circars came under the East India Company, thay also adopted the system of collection of revenue through zemindars by giving them leases either annually or for terms of three or five years [1]. In the case of *havelly* lands [2], they collected the revenue by means of renters. At the time of the permanent settlement, the zemindars in the Northern Circars comprised the following classes of persons:—(1) descendants of ancient Rajas and their former revenue officers; (2) descendants of the revenue officers of the Moghul Empire; (3) renters of *havelly* lands.

Poligars or Palayakarans.

Similar to the zemindars of the Northern Circars, were the Poligars or Palayakarans of the Ceded Districts and the Carnatic, who rose to power under similar events and similar circumstances. Their history will be found described in the Fifth Report [3] and in the undermentioned cases [4]. They comprised (1) descendants of ancient Rajas; (2) leaders of banditti of freebooters, who, for the preservation of internal order in the country, had been either expressly entrusted with the charge of police or had been suffered to take upon themselves that kind of service (3); descendants of persons who had held offices of trust under the Hindu Governments, and who had been given certain villages as

[1] *Fifth Report*, II. 22. 23.

[2] These were lands which consisted of the old demesne or household lands of the sovereign, and districts near to towns resumed by the Mahommedan Government and appropriated for the peculiar support of their garrison and establishment, *Fifth Report*, II. 10; *Godavery Dt. M.* 245; *Kistna Dt. M.* 848; *Vizagapatam Dt. M.* 114.

[3]. II. 87, *et seq.*

[4]. *Naragunty Lutchmeedavamah* v. *Vengama Naidu*, 9 M. I. A. 66; *Lekkamani* v. *Puchaya Naicker*, 6 M. H. C. R. 208 (220-221); *Kaliyana Rengappa* v. *Yuva Rangappa*, 28 Mad. 508 (512, 513); 32 I. A. 261.

inam either as rewards for their service or partly for them or partly for the maintenance of a body of horse and foot ready to be called at the requisition of the Sovereign; and (4) renters of districts or revenue officers, including potails, who, in troublesome times, designated themselves Kavalgars [1]. As in the case of the zemindars of the Northern Circars, no poligars, except perhaps those who were descended from the ancient Rajas, were considered to have any proprietary interest in the land under their charge [2]. Their history and their treatment of them by the British Government are well described in the following extract from the judgment of the Madras High Court in *Lekkamani* v. *Puchaya Naiker* [3]: "The name 'Poligar' appears to have been applied before the Mahratta Invasion to persons holding, in the southern and western portions of the Madras Presidency, the position of those who had acquired the name of Zamindar in the Northern Districts, and substantially the history of the two classes is similar. Originally the descendants of officers of Police and Revenue agents of Hindu Sovereigns, they advanced themselves to the positions of chiefs, maintaining military forces and possessing fortresses and strongholds. As such they were employed by Mussulman rulers in upholding subjection to their Government and managing the collection of revenue; and although (as remarked by Mr. Mountstuart Elphinstone in his History of India) it seems doubtful whether they were more than chiefs enjoying some degree of independence before the time of Aurangazib; yet, in later times, by embracing the frequent opportunities for refractoriness and the extension of their powers, afforded by the weakness and inefficiency of the ruling power, they reached to the independence of tributary feudatories and proprietary holders of land; and that position they or their descendants, were in general permitted to enjoy, hereditarily down to the establishment of British Government. That permission, however, cannot be pronounced to have amounted to a positive recognition establishing their assumed rights, generally (except, perhaps, as respects

[1] *Fifth Report*, II. 88.
[2] *Ibid.*
[3] 6 M. H. C. R. 208 (220, 221).

a few who traced herisMp through a long descent from Rajas or officers who had received villages in Inam), because of their not unfrequently having been deprived of their rights. But it can hardly be doubted that it was decisive and retensive enough to give strong claims to such a recognition. Indeed, the Company's officers appear to have at first regarded them as already possessing established titles as landed proprietors; and although that view was, after a time, modified, nothing was done indicating any doubts as to the strength of the claims of both Zemindars and poligars to be secured in such titles; or any wish in opposition to a compliance with such claims.

"Among the first acts of the Company's Government were the reinstatement of some Poligars who had been driven out of their Palayams, and the confirmation of the others (save a few who continued rebellious) in the enjoyment of their estates, upon the conditions of rendering to the Government their tribute and services (which were soon after converted into an increased jumma or rent adjusted according to the productive value of the lands), and of the regular letting of their lands to ryots for cultivation: and when, subsequently, disturbances were caused by the Poligars of some districts, the Government, in the course of which was deliberately decided upon and pursued, treated them as insubordinate landholders who exercised powers incompatible with the position of subjects, and paid an insufficient jumma. They were coerced to surrender all their civil and military administrative powers, and had their jumma increased to a new temporary assessment to an amount which left them more of the returns from the land than was consistent with any other position than that of proprietors. When, again, on the recurrence, after such assessment, of rebellious conduct on the part of some Poligars in the Tinnevelly District, their palayams were taken from them, some of the lands were added to the holdings of other deserving Poligars. Other Palayams too, that were given up to the Government because of the discontent of the holders with the new assessment, in order that their actual productive qualities might be known,

were upon the proper rates of jumma being fixed, returned with the exception of one or two sequestered on special grounds) to the former holders, and in one or two instances, at least, to the heir of a former holder"[1].

Introduction of the permanent settlement.

Though these zemindars and poligars were allowed to continue hereditarily in the enjoyment of their zemindaries and palayams as long as they paid regularly the revenue thereon, it was never constant but was liable to fluctuation. Under similar circumstances in Bengal, the Governor-General, *Lord Cornwallis*, with the approval of the Court of Directors, introduced the permanent settlement system. Political and financial considerations, as well as a desire to create a landlord class similar to that in England, induced him to propose the system [2]. After its introduction in Bengal in 1793, the Court of Directors in their despatch to the Madras Government dated 21-4-1795 expressed a desire to see the Bengal system introduced in Madras [3], and the Supreme Government in 1796 asked the Madras Government to inform them of the measures they had taken for carrying out the instructions of the Court of Directors [4]. The proposal for the introduction of the permanent settlement in Madras did not find much favour with the officers here, except with regard to its application in the Northern Circars which had long been under zemindars, but in 1799 positive orders being issued that Collectors who were found incapable or unwilling to carry out the system would be removed [5], circular instruction were sent out by the Board of Revenue to all Collectors for fixing the peishcush and dividing the estates [6]. A special commission was appointed in 1802 for fixing the peishcush [7], and Regulation XXV of 1802 was passed for carrying out the purposes of the permanent settlement.

Creation of another class of zemindars.

The introduction of the permanent settlement system gave rise to another class of landholders, the purchasers of *havelly* or *Sircar* lands, who were placed on the same footing as the existing zemindars. Under the instructions of the Board

[1] The above observations which were made with regard to the Carnatic Poligars apply equally to the Poligars of the Ceded Districts.

[2] *Fifth Report*, I. 624, 625.

[3] *Fifth Report*, II. 46.

[4] *Ibid*, 47,

[5] *Ibid*, 50; 335

[6] *Ibid*, 317.

[7] *Ibid*, 316.

of Revenue [1] issued in October 1799 the ancient zemindars were assessed at two-thirds of the collections made by them, and in computing them, the income derived from their private lands was also taken into consideration [2]. The *havelly* lands, comprising not only lands known by that name in the Northern Circars, but also lands under the immediate control of the Government, known as *Sircar* or *ayan* lands in the Southern part of the Presidency, were parcelled out into estates, or muttahs as they were called in the Salem District, and sold to the highest bidders [3]; each of these estates was to comprise all villages watered by one tank and not detached villages [4]. It was then stated that the wish of the Government was to leave the construction and care of the tanks and watercourses entirely to the proprietors and to keep them in its own hands only where the works were of general importance to the country, or too extensive to be entrusted to the charge of individual proprietors, or where for other causes, it was considered advisable so to keep them [5].

Effect of the permanent settlement.

The effect of the permanent settlement has been to convert the precarious tenure of the zemindars into a permanent one [6]. It gave them and also those created after 1802 a right to hold their zemindaries for ever on a fixed revenue, with heritability and transferability. Section 2 of Regulation XXV of 1802 purports to transfer the proprietary rights of the soil to the zemindars. The authors of the permanent settlement having been brought up in the midst of the English feudal ideas of property, and having witnessed the dispossession of zemindars by the Mahomedan Government, and of ryots by the zemindars, concluded that in India also the proprietorship of the soil belonged to the Crown, and that idea is expressed in the Regulation also. In a former Chapter this subject has been exhaustively dealt with [7]. In the discussions which preceded the permanent settlement in Bengal, *Lord Cornwallis* with whom

[1] *Fifth Report*, II. 322, para 17.
[2] *Ibid*, 324, para 25.
[3] *Ibid*, 330, para 58.
[4] *Ibid*, 331, para 59.
[5] *Ibid*.
[6] *Preamble to Regulation* XXV of 1802; *Raja Venkata Rangayya Appa Rao* v. *Appalarazu*, 20 M. L. J. 728.
[7] *Chapter* I. pp. 16—20.

Sir John Shore agreed on this point admitted that the ryots had property in the land they cultivated. *Lord Cornwallis* in his minute dated 3-2-1790 [1] argued that the proprietary rights of the soil conferred on the zemindars were not inconsistent with the right of the ryots to hold possession of the lands they cultivated as long as they paid the rent thereon, though the zemindars could not demand from them any thing more than the accustomed rent, nor dispossess them; and *Sir John Shore* was of opinion that the zemindar performed acts of authority unconnected with any proprietary right, that the Government had rights without real property, and that the property of the one, and the rights of the other were in a great measure held at discretion[2]. In the instructions issued by the Governor-General to the Madras Government prior to the introduction of the permanant settlement in Madras, the former distinctly informed the latter that the acknowledgment of the proprietary right in the zemindars existing, or those to be created, was not to be allowed in any respect, to affect the rights of the ryots or others, who had been, in any respect, subject to the authority of the zemindars or other land-holders; nor was it to be construed to preclude Government from passing any laws or regulations which might occasionally be deemed expedient, for the protection of the rights of the ryots, or of other persons, or for other purposes, which might be deemed essential to the good government of the country [3]. The same view was also expressed in the instructions issued to the collectors by the Board of Revenue in 1799 [4]. Notwithstanding all such declarations, no provision was made in Regulation XXV of 1802 safeguarding the rights of the ryots, and when this lacuna was felt, Regulation IV of 1822 was passed at the instance of *Sir Thomas Munro*, which declared that the former Regulation was not intended to define, limit, infringe or destroy the actual rights of any description of tenants. The words "proprietary possession" used in Section 2 of Regulation XXV mean the possession and rights of a proprietor in the technical sense

[1] *Fifth Report*, I. 615.
[2] *Ibid*, 601.
[3] *Fifth Report*, II. 50.
[4] *Ibid*, II. 326, para 34.

in which the word is used, *viz.*, the person who pays the revenue immediately to the government [1]. Inasmuch as the rights of the ryot are derived independently of the Government, the grant of the proprietary right of the soil conveys only such right as the Government had in the lands. If the Government owned both the warams, as in the case of waste lands, lands relinquished or abandoned by tenants, the grant will be of both warams, but in other cases, only the grant of melwaram. *Prima facie* the Government being entitled to the royal share or melwaram, its assignee, the zemindar, is entitled only to melwaram [2]. Under the permanent settlement, the entire waste in the zemindary is conveyed to the zemindar [3].

Fixing of peishcush.

The assessment thus fixed is permanent and unalterable, and the zemindar cannot ask for remission on account drought, inundation or other calamities of the season [4]. On the fixing of such assessment, he is granted a *Sanad-i-milkiyat-i-istimrar* or deed of permanent property in which the conditions and articles of the tenure are entered, and the zemindar is required to execute a corresponding kabuliat [5]. When any dispute arises as regards assessment, it is to be regulated in accordance with the sanad and the kabuliat [6]. The permanent assessment thus arrived at and fixed is exclusive of revenue derivable from "the several heads of salt and saltpetre—of the sayar, or duties by sea or land—of the abkari, or tax on the sale of spirituous liquors and intoxicating drugs—of the excise on articles of consumption—of all taxes personal and professional as well as those derived from markets, fairs and bazars—of lakhiraj lands (or lands exempt from the payment of public revenue) and of all other lands paying only favourable quit rents [7]," and no land is to be considered as being held on condition of performing police duties, unless it is expressly mentioned in the sanad,

[1] *The Collector of Trichinopoly*, 1 *Lekkamani* I I. A. 282 : 14 Ben. L.R. 115 : 21 W. R. 358.

[2] *Innes J*, in *Fakir Mahomed* v. *Tirumala Chariar*, 1 Mad, 205 (212); *Venkata Mahalakshmamma* v. *Ramajogi*, 16 Mad 271; *Venkatanarasimha Naidu* v. *Dandamudi Kottayya*, 20 Mad. 299 (302) ; *Narayana Ayyangar* v. *Orr*, 26 Mad. 252.

[3] *Instructions to Collectors*, *Fifth Report*, II. 324, para 27 ; *Narayana Ayyangar* v. *Orr*, 26 Mad. 252,

[4] *Section* 6.

[5] *Section* 3.

[6] *Ibid*.

[7] *Section* 4.

and such lands are to be disposed of in any manner the Government thinks fit[1]. The assumption of the sayar does not include the rent derivable by the proprietor for orchards, pasture grounds, and fisheries or for warehouses, shops or other buildings, it being only ground rent[2]. But he has no right to levy *moturpha* or trade-tax from artisans in his zemindari[3]. *Ghattuthumulu* which is a cess paid by an inamdar for the purpose of enabling the zemindar to keep the tanks in repair is not "revenue" within the meaning of Regulation XXV of 1802, and therefore the zemindar can collect it [4]. He has no right to resume inams granted before the permanent settlement [5]; nor such inams the jodi payable thereon alone has been included in the peishcush at the time of the permanent settlement. The words "exempt from the payment of the public revenue" are not the same as "free of money payment to the zemindar" [6]. Therefore it was held that, in cases of inams granted before the permanent settlement by which personal services were reserved to the zemindar, he had the right to resume them, and that it was for the Government to show that they were not included in the assets at the time of the permanant settlement [7].

Zemindars' power of alienation.

Section 8 of the Regulation gives power to the zemindars to alienate by gift or sale, or otherwise dispose of their proprietary rights in the zemindary in whole, or in part without the previous consent of the Government, and enacts that, unless such transfer is recorded in the office of the Collector, it is of no legal force or effect, nor does it exempt the alienated part from being proceeded against for the entire revenue. The earlier Madras cases[8] held that any alie-

[1] *Section* 5.

[2] *Instructions of the Board of Revenue Fifth Report*, II. 321, para 14.

[3] *Vedanta* v. *Kanniyappa*, 9 Mad. 14 (F.B.)

[4] *Venkata Narasimha Rayudu* v. *Raja Venkata Rengayya Appa Rao*, (1914) M.W.N. 373; 1 L.W. 333.

[5] *The Secretary of State* v. *The Raja of Pittapur*, (1913) M. W. N. 478: 24 M. L. J. 530; *Rama Rao* v. *The Secretary of State*, (1913) M.W.N. 639; *Tadikonda Buchi Virabadrayya* v. *Sonti Venkanna* (1913) M.W.N. 782.

[6] *Raja Venkatarangayya Appa Rao* v. *Appalarazu*, 20 M.L.J. 728: *Raja Parthasarathy Appa Rao* v. *The Secretary of State*, 38 Mad. 620.

[7] *Ibid.*

[8] *Subbaroyalu Naik* v. *Rama Reddi* 1 M. H. C. R. 141; *Pitchakutti Chetti Ponnamma Natchiar*, 1 M. H. C. R. 148; *Syed Ali Saheb* v. *The Zemindar of Salur* (Holloway J diss) 3 M. H. C. R. 5; *The Zemindar of Bobbily* v. *Sitaramayya Garu*, 3 M. H. C.R. 67.

nation which was not registered in the office of the Collector was not binding either on the grantor or his successor; but the Privy Council has held [1] that the restriction on alienation was imposed only to secure the interests of the revenue, and to prevent the severance of the zemindary without notice to Government, and that the zemindar had no power to disturb grants, otherwise valid, made by his predecessor. A permanent lease is not a transfer within the meaning of the Regulation and does not require registration[2].

Alienation of part.

If a portion of a zemindary is alienated, its liability for payment of revenue due on the entire zemindary remains, unless it has been separately registered in the office of the Collector [3]. For the purpose of such separate registration, procedure is laid down in section 9 of Regulation XXV of 1802, section 2 of Regulation XXVI of 1802, and Act I of 1876. Section 9 of the first Regulation requires the zemindar or landholder to furnish the Collector with true and accurate accounts of the entire zemindari and of the portion to be separated to enable him to fix the revenue of the separated portion, and section 2 of Regulation XXVI requires the Collector of each district to keep public registers for the purpose of registering the landed property within the district, and to enter all transfers of land from one proprietor to another. Though there is a only a duty imposed on the Collector to register and subdivide all alienations, no remedy is provided for in the Act for his failure to perform it. The Madras High Court held in *Ponnusamy Thevar* v. *Collector of Madura* [4] that, where the duty of registering and subdividing was imposed on the Collector, he was bound to take the necessary steps to validate the transfer, on the principle that there could be no right without a remedy, and that the Court could compel the Collector to register and subdivide it, if such transfer was

Separate registration.

[1] *Venkateswara Yettiappa Naiker* v. *Alagoo Muttu Servaigaran*, 8 M. I. A. 327; *Muthu Vaduganatha Thevar* v. *Doraisingha Thevar*, 3 Mad. 290: 8 I. A. 99; *Vizianagaram Maharaja* v. *Suryanarayana*, 9 Mad. 307: 13 I. A. 32.

[2] *Venkatswara Yettiappa Naicker* v. *Alagoo Muttu Servaigaran*, 8 M. I. A. 327; *Kondappa Naick* v. *Annamalay Chetty*, 4 M. H. C. R. 396; *Muthuviran Chetty* v. *Rani Kattama Nachiar*, 4 M. H. C. R. 463, overruling *Subbarayulu Naick* v. *Rama Reddi*, 1 M. H.C. R. 141.

[3]. *Section* 8 of Reg. XXV of 1802.

[4]. 3 M. H. C. R. 35; *Bommarazu* v. *Seshamma*, 22 Mad. 438.

otherwise valid. An application to the Collector to grant separate registration of a portion of a permanently settled estate which has been alienated by court sale is one under the provisions of Regulations XXV and XXVI of 1802[1]. Act 1 of 1876 applies to cases of private alienations and lays down the procedure to be followed by the Collector in dealing with applications for separate registration. As there was a doubt as to who were meant by the words "Collector of the District" and "Collector" in the Act, Act II of 1914 was passed, which declared that those words were meant to have included and to include any officer who might have been, or might be, authorised by the Governor-in-Council to exercise the power of separately assessing lands alienated, thereby validating the orders passed by him before the Act. Where both the alienor and the alienee agree before the Collector to have the separate registration made, he has no jurisdiction to refuse it on the ground that others interested in the property object to it[2], and the Collector has jurisdiction to order separate registration, even if there is an agreement between the parties to apportion the peishcush in a particular way[3]. Where, however, one of the parties does not agree before the Collector to have the separate registration made, he has no jurisdiction to order it and the Civil Court alone can[4]. Registration follows title[5]. The words "alienor" and "alienee" are reciprocal and imply only those parties between whom the reciprocal relation exists; therefore the word "alienor" means the actual party to the transaction and not a party to any transaction in the chain of the title of the alienor, and is not restricted to the person whose name is entered in the Collector's register[6]. A permanent lease not being a transfer of the proprietary right or ownership[7], the grantee thereof is not entitled to have his

[1] *Bommarazu* v. *Seshamma*, 22 Mad. 438.

[2] *The Collector of Salem* v. *Peer Batcha Saheb*, 30 Mad. 106.

[3] *Kamalammal* v. *Raju Naiker*. 19 Mad. 308; *The Collector of Salem* v. *Peer Batcha Saheb*, 30 Mad. 106.

[4] *Kamalammal* v. *Raju Naiker*, 19 Mad. 308.

[5] *Kamalammal* v. *Raju Naiker*, 19 Mad. 308; *The Collector of Salem* v. *Peer Batcha Saheb*, 30 Mad. 106.

[6] *The Collector of Salem* v. *Peer Batcha Sahab*, 30 Mad. 106.

[7] *Venkateswara Yettiappa Naiker* v. *Alagoo Muttu Servaigaran*, 8 M. I. A. 327.

name separately registered [1]. There is no provision in the Act that any party wrongfully withholding his consent is to be liable for any loss which the claimant may incur in consequence of his refusal to consent. The result of his refusal is that he is made one of the defendants to the suit, and if unsuccessful, has to pay the plaintiff's costs, and cannot be made liable for more [2]. Any person aggrieved by the Collector's order directing or refusing separate registration can enforce his claim in a civil court [3], and any person aggrieved by the apportionment of the assessment may appeal to the Board of Revenue, the period of limitation being ninety days from the date of the declaration of such assessment, and the order of the Board of Revenue is final [4]. The period of ninety days runs from the date when the Collector declares the apportionment of the assessment, after the apportionment proposed by him to the Board of Revenue has been sanctioned, and not from the date when the Collector himself fixes the amount and submits his proposal to the Board of Revenue for sanction[5]. Upon such separate assessment, the portion so assessed is not liable for arrears of revenue due in respect of the estate of which it formed part; nor is such estate liable in respect of the portion so assessed [6]. Power is given to the Governor-in-Council to readjust at any time the separate assessment, if there has been fraud or material error in the apportionment[7]. The decision of the Collector in a case within his jurisdiction, whether for or against separate registration, when duly sanctioned as provided in the Act, can only be questioned in a civil court [8].

Power of the holder of an impartible zemindary.

In *Bhavanamma* v. *Ramaswami* [9], the Madras High Court held that the power of the holder of an impartible zemindary to make an alienation of it, was similar to that of the manager of a joint Hindu family, and that any alienation, in the absence of necessity, was not valid beyond his life and would not bind his successors. But the Privy Council in

1 *Raja of Vizianagaram* v. *The Collector of Vizagapatam*, 27 M.L.J. 278: (1914)M.W.N. 610: 1 L.W. 635.

2 *Narayanasami Naidu* v. *Sree Raja Vellanki Sreenivasa Jagganatha Rao*, 33 Mad. 189.

3 *Sections* 5 and 6.

4 *Section* 7.

5 *The Secretary of State* v. *Robert Fischer*, 26 Mad. 389.

6 *Section* 4.

7 *Section* 8.

8 *Robert Fischer* v. *The Secretary of State*, 22 Mad. 270: 25 I.A. 16.

9 4 Mad. 193.

Sartaj Kuari v. *Deoraj Kuari* [1] held that the restraint on alienation under the Mitakshara law was inconsistent with the custom of impartibility and succession according to primogeniture and that, inasmuch as the eldest son did not become a cosharer with his father in cases where primogeniture prevailed, inalienability depended upon custom which must be proved, and that, in the absence of any such custom, he had full power to alienate in any way he liked. This decision was re-affirmed and extended to cases where the holder alienated the zemindary by will [2]. On the extension of this doctrine, the Madras Government at the instance of the Madras Landholders' Association passed Act II of 1904 restricting the power of the holders of certain zemindaries and declaring them impartible. The Act applies only to those estates mentioned in the Schedule attached to it, which are mainly ancient zemindaries that existed before 1802. Section 4 (1) of the Act restricts the power of the holder to alienate or bind by his debts any estate or part thereof to such circumstances as would entitle the manager of a joint Hindu family, not being the father or grandfather of the other coparceners, to make an alienation of the joint property, or incur a debt, binding on the shares of the other coparceners independently of their consent, so that unless there is necessity, he cannot make any alienation or incur any debt binding on the estate. But he is expressly authorised by section 4 (2) to grant sites for public, charitable or religious institutions, and to grant mining and quarrying leases for terms not exceeding sixty years, and leases of the pannai or home farm lands for terms not exceeding fifteen years, provided that every such lease (1) is made by registered deed and takes effect in possession not later than twelve months after its date, (2) reserves the best rent that can reasonably be obtained without having regard to any fine or premium paid or to be paid in consideration of such lease, (3) contains a covenant by the lessee for payment of rent and a condition of re-entry within a time therein specified not exceeding three months, (4) if a mining or quarrying

[1] 10 All. 272: 15 I. A. 51.

[2] *Sri Raja Rao Venkata Surya Mahipati Rama Krishna Rao Bahadur* v. *The Court of Wards*, 22 Mad. 383: 26 I. A. 83.

lease, may make the rent ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of in or from such estate, or any other land, or by or according to any facilities given in that behalf, and may reserve a fixed or minimum rent with or without power for the lessee, in case the rent according to acreage or quantity in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent. Wherever leases are proposed to be made under section 4 (2), either the lessor or lessee may submit a draft of the proposed lease to the Board of Revenue which may approve of it, if, after making such inquiries and issuing such notices as it thinks fit, it is satisfied that it is in accordance with the provisions of the Act; and a lease executed by the proprietor in accordance with such draft is to be deemed to have been duly granted in accordance with the provisions of the Act[1]. The Act further prohibits the proprietor from alienating or binding by his debts the estate or part thereof beyond his own life for the payment of land revenue, unless the consent of the Collector in writing is first obtained [2]. It is, however, declared that the Act does not apply to (1) the power of the owner to provide for the succession of the estate in default of heirs[3], (2) alienations made or debts incurred before the coming into force of the Act[4], and (3) estates thereafter lawfully alienated otherwise than by temporary transfer [5].

Zemindars' right to minerals.

Where the title of a zemindar to a village is established as part of his zemindary, he is presumed to be the owner of the underground rights in the absence of evidence that he has parted with them [6], and this right is recognised in

[1] *Section* 5.
[2] *Section* 6.
[3] *Section* 7.
[4] *Ibid.*
[5] *Section* 4 (3)
[6] *Hari Narayan Singh Deo* v. *Sriram Chackravarti*, 37 Cal. 723: 37 I. A. 136, reversing *Sriram Chackravarti* v. *Hari Narayan Singh Deo Bahadur*, 33 Cal. 54; *Jyoti Prasad Singh* v. *Lachipur Coal Company*, 38 Cal. 845; *Durga Prasad Singh* v. *Braja Nath Bose*, 39 Cal. 696, (P.C.), reversing *Brojanath Bose* v. *Durga Prasad Singh*, 34 Cal. 753; *The Nowaghur Coal Co. Ltd.* v. *Sashi Bhushan Ray*, 19 C. W. N. 375.

the Standing Orders of the Board of Revenue, wherein it is declared that no claim to minerals should be made on behalf of the State in estates held on sanads of permanent settlement [1]. Where the zemindar executed a permanent lease of an agricultural character, and there was no evidence to show either that he parted with mineral rights, or that such rights were acquired by prescription, the lessee has no right to work the minerals [2]; so also the grantee of a *mogoli brahmottar* granted either before or after the permanent settlement, who is a permanent tenure holder, is not entitled to them, when there is no evidence to show the intention of the parties at the time of the grant [3]. In *Durga Prasad Singh* v. *Braja Nath Bose* [4] certain villages situated within the limits of the plaintiff's zemindary were granted on Digwari tenure, which was hereditary and inalienable, and whose holders were appointed and dismissed by Government, but there was no separate settlement with them at the time of the permanent settlement and the rent reserved was made payable to the zemindar. The Privy Council held reversing the decision of the High Court [5], that the minerals remained with the zemindar, in the absence of evidence that he ever parted with them.

Liability of zemindars to maintain tanks.

The duty of maintaining the existing tanks and of constructing new ones, which was formerly undertaken by the Government of India has devolved on permanent settlement with the zemindar with whom it was made. He has, therefore, no power to do away with the tanks in the maintenance of which large numbers of people are interested, but is charged with the duty of preserving and maintaining them. His rights and liabilities are analogous to those of a person or a corporation on whom statutory powers have been conferred or statutory duties imposed [6]

[1] S. O. No. 25. I (a)

[2] *Hari Narayan Singh Deo* v. *Sriram Chackravarti*, 37 Cal. 723 : 37 I. A. 136 reversing *Sriram Chackravarti* v. *Hari Narayan Singh Deo*, 33 Cal. 54.

[3] *Jyoti Prasad Singh* v. *Lachipur Coal Company*, 38 Cal. 845 ; *The Nowaghur Coal Co. Ltd.* v. *Sashi Bhushan Ray*, 19 C. W. N. 375.

[4] 39 Cal. 696 (P.C.)

[5] *Braja Nath Bose* v. *Durga Prasad Singh*, 34 Cal. 753.

[6] *The Madras Railway Company* v. *The Zemindar of Karvetnagar*, 1 I. A. 369: 22 W. R. 279 affirming *The Madras Railway Company* v. *The Zemindar of Karvetnagar*, 5 M. H. C. R. 139.

Unsettled palayams.

Certain estates of the palayam class to the holders thereof permanent sanads have not been granted are known as *unsettled palayams*, as they refused to accept the offer of permanent settlement made to them by Government, on condition that they continued to pay the tribute which they have been paying for fifty years past [1]. In *The Collector of Trichinopoly* v. *Lekkamani* [2] the Government contended that, in an unsettled palayam the holder had only a life estate and the right of appointing a successor was vested in it, but the Privy Council overruled the plea and held "that the only difference between a palayam or zemindary which is permanently settled and one that is not is that, in the former the Government is precluded for ever from raising the revenue; and in the latter, the Government may or may not have the power". There is now no difference between the two classes of palayams [3]. The assessment is fixed in both cases, and the succession is governed upon the same principles. The unsettled palayams have therefore a demand perpetually fixed, but no permanent title [4].

Liability of zemindars and inamdars to water-cess.

Water-cess is levied by Government by virtue of Act VII of 1865, (1) when water is supplied or used for the purpose of irrigation from any river, stream, channel, tank or work belonging to or constructed by the Government, or (2) when water from any such source is received by direct or indirect flow or by percolation or drainage and irrigates any land under cultivation or flows into a reservoir and is thereafter used for irrigating any land under cultivation. In the latter case the irrigation must, in the opinion of the officer empowered to charge water-cess subject to the control of the Collector, the Board of Revenue and the Government, be beneficial to, and sufficient for, the requirements of, the crop on such land. Such levy, however, must not be made when there is an engagement entered into between the zemindar or inamdar or any other description of land-holder not holding under

[1] *Man of Adminis*, I. 120; *Baden Powell*, L. S. B. I. III. 131-133.

[2] 1 I. A. 282: 14 Ben. L. R. 115: 21 W. R. 358; *Narayana* v. *Chengalamma*, 10 Mad. 1.

[3] *Man of Adminis*. I. 120.

[4] *Ibid.*

ryotwari settlement and the Government, and must be made before the end of the revenue year succeeding that in which such irrigation takes place. The Government is empowered to make rules under which, and the rate at which, the water-cess is to be levied. In the case of lands held under ryotwari settlement which are classified and assessed as wet, no charge is to be levied for water, but can be levied, if water is taken without permission from a source which is not the recognised source of irrigation for such lands [1].

Construction of the Act.

Following the preamble to the Act, *Sankaran Nair, J.* held that, unless the work in question is shown to have been constructed by or on behalf of the government, water flowing therefrom could not be charged for [2]; but this view was not accepted by *Oldfield* and *Bakewell, JJ.* in *The Secretary of State* v. *Janakiramayya* [3]. Before the amendment of section 1 by Act V of 1900, it was held that the word "supply" implied a previous request, express or implied, and that the word "used" presupposed freedom either to use or abstain from using water and that, therefore, when excess water from a government canal flowed from it and submerged a ryot's land, and stagnating upon it rendered dry cultivation impossible, and the ryot thereupon raised a species of paddy called tiruvaranangam paddy, he was not liable to pay any water-cess as the water was neither "used" nor "supplied [4]." This interpretation of the word "supplied" was not accepted by *Sadasiva Ayyar, J.* in *The Secretary of State* v. *Janakiramayya* [5]. In *The Secretary of State* v. *Sawmi Naratheeswarar* [6] it was pointed out that the old section was amended to get rid of the effect of those decisions, and that clause (*b*) of section 1 created a liability to assessment where the water from any Government source irrigated any land under cultivation, and not merely was used for purposes of cultivation, and that with

[1] *Section* 1.

[2] *The Secretary of State* v. *Janakiramayya*, 37 Mad. 322.

[3] 29 M. L. J. 389.

[4] *Venkatappayya* v. *The Collector of Kistna*, 12 Mad. 407; *Krishnayya* v. *The Secretary of State*, 19 Mad. 24.

[5] 29 M. L. J. 389.

[6] 34 Mad. 21.

or without the will of the person whose land was benefitted by the water. It was further pointed out in that case that the Act was not based upon the theory of the ownership of the bed of the tank or water course being the foundation of the right to use the water free of charge. Therefore it was held that the fact that water from a Government source was mixed with that from another source, or passed through a river bed or channel of joint, doubtful, or even alien ownership was immaterial and that water-cess could be levied [1].

How far water in proprietary estates can be charged.

Section 2 of Act III of 1905 declares the bed of all rivers, streams, nalas, lakes and tanks and all canals, and water-courses, and all standing and flowing water, and all lands, wherever situated, to be the property of the Government, save in so far as they are the private property of individuals, and the effect of this section has been held to create a strong, though rebuttable, presumption in favour of the Government [2]. According to *Sankaran Nair, J.* the declaration of Government ownership contained in the Act cannot be availed of in the case of the levy of water-cess before the Act[3], but this view has not been accepted by *Oldfield, Sadasiva Ayyar* and *Bakewell, JJ.* in *The Secretary of State* v. *Janakiramayya* [4] and by *Sir John Wallis, C.J.* and *Seshagiri Ayyar J.* in *The Secretary of State* v. *The Maharaja of Bobbili* [5]. Another question on which there is a difference of opinion in the Madras High Court is whether water flowing in natural streams through proprietary estates can be charged for, when their beds had been granted to the proprietors thereof. In *Kandakuri Mahalakshmamma* v. *The Secretary of State* [6], it was held by *Miller* and *Munro JJ.* that the water therein became the property of the Government, and that therefore water-cess could be levied. The same question arose in *The Secretary of State* v. *Janakiramayya* [7] before *Miller* and *Sankaran Nair, JJ.* The former adhered

[1] *The Secretary of State* v. *Swami Naratheeswarar*, 34 Mad 21; *The Secretary of State* v. *Ambalavana Pandara Sannadhi*, 34 Mad. 366.

[2] *The Secretary of State* v. *Janakiramayya*, 29 M. L. J. 389.

[3] *The Secretary of State* v. *Janakiramayya*, 37 Mad. 322.

[4] 29 M.L.J.389.

[5] A. S. 113 of 1910 (unreported.)

[6] 34 Mad. 295.

[7] 37 Mad. 322.

to the view taken by him in *Kandakuri Mahalakshmamma* v. *The Secretary of State* [1], while the latter doubted its correctness, and in the Letters Patent Appeal filed owing to this difference of opinion [2], it was held by *Oldfield* and *Bakewell, JJ.*, *Sadasiva Ayyar, J.* dissenting, that water-cess could be levied in such cases. In the subsequent case of *The Secretary of State* v. *The Maharaja of Bobbili* [3], *Sir John Wallis, C.J.* and *Seshagiri Ayyar, J.* preferred to follow the views of *Sankaran Nair* and *Sadasiva Ayyar, JJ.*

Engagement.

Engagement is only an undertaking on the part of the Government to allow the use of its water free of charge. It may either be express or implied [4], and may be either with reference to a certain quantity of water, or a certain acreage. In respect of a zemindary, it may be either before or after the permanent settlement [5]. The permanent settlement itself will be an engagement [6]. Therefore if the zemindar is able to show that at the time of the permanent settlement, the income derivable from the wet lands was taken into consideration in fixing the peishcush, or the village or zemindary itself was treated as wet, there will be an implied engagement to supply water to that extent and no water-cess can be charged therefor [7]. Where, subsequent to the permanent settlement, the wet area in the zemindary is increased, and another source of supply substituted for the existing source of supply by the introduction of the anicut system, the zemindar is entitled to free supply to the area cultivated as wet at the time of its introduction, and not to that at the time of the permanent settlement [8].

In the case of zemindaries.

[1] 34 Mad. 295.

[2] *The Secretary of State* v. *Janakiramayya*, 29 M. L J. 389 ; See also *Venkataratnammah* v. *The Secretary of State*, 37 Mad. 364.

[3] *A. S.* 113 of 1910 (*unreported*)

[4] *Sri Raja Jaghapathi Razu* v. *The Secretary of State*, 28 M. L. J. 51 ; *Rajagopalacharyulu* v. *The Secretary of State*, (1913) M. W. N. 937 ; *Venkata Rangayya* v. *The Secretary of State*, 37 Mad. 355.

[5] *Rajagopalacharyulu* v. *The Secretary of State*, (1913) M. W. N. 937.

[6] *Vadrevu Ranganayakamma* v. *The Secretary of State*, 28 M. L. J. 297.

[7] *Rajagopalacharyulu* v. *The Secretary of State*, (1913) M. W. N. 937 ; *Vadrevu Ranganayakamma* v. *The Secretary of State*, 28 M. L. J. 297.

[8] *Venkata Rangayya* v. *The Secretary of State*, 37 Mad. 355.

In the case of inams.

In the case of inams the extent recorded as wet by the Inam Commissioner in the title deed issued by him is *prima facie* evidence of an engagement to supply water free of charge to that extent [1], but it is not conclusive. The inamdar can show that, notwithstanding the extent recorded by the Inam Commissioner, he is in fact entitled to a larger extent, and where the customary flow cannot be ascertained, the area irrigated will be presumed to be the measure of the quantity of water used at the time of the grant [2]. A decree of a civil court establishing the right of the inamdar to a share of the water passing through a river will constitute an engagement [3]. He can also show that the excess of wet cultivation irrigated with the aid of Government water is due to the thrifty use of the water, or the careful maintenance of his channels and tanks to prevent wastage, and not to the use of an increased quantity of water taken [4].

Jurisdiction of the Collector and the Civil Court with respect to the levy of water-cess.

When water has once been taken to irrigate lands, its beneficial character and sufficiency therefor are not for the civil courts to decide, but are entirely left to the Collector, subject to the control of the Board of Revenue and the Government [5]. Where a person was authorised to take water from a particular government channel through one pipe, but some one laid a second pipe without the authority or approval of the Public Works Department as required under the rules, and the water from the two pipes was used for the irrigation of the plaintiff's lands, it was held he was liable to pay double rate, although he could not be proved to have laid the second pipe [6]. As the levy is to be made before the end of the year succeeding that in which the irrigation takes place, the government has

[1] *Chidambara Rao* v. *The Secretary of State*, 26 Mad. 66; *Lutchemee Doss* v. *The Secretary of State*, 32 Mad. 456; *The Secretary of State* v. *Ramanuja Jeer Swamigal*, (1915) M.W.N. 636.

[2] *Sethumathava Chariar* v. *The Secretary of State*, 1 L.W. 941.

[3] *Kesari Venkata Subbiah* v. *The Secretary of State*, 13 M.L.T. 131; *Sir Raja Jaghapathi Razu* v. *The Secretary of State*, 28 M.L.J. 51.

[4] *Appaswami Iyer* v. *The Secretary of State*, 7 M. L. T. 349; *The Secretary of State* v. *Ambalavana Pandara Sannadhi*, 34 Mad. 366.

[5] *The Secretary of State* v. *Swami Naratheeswarar*, 34 Mad. 21; *The Secretary of State* v. *Ambalavana Pandara Sannadhi*, 34 Mad. 366.

[6] *Kristna Rao* v. *The Collector of Kistna*. 26 M.L.J. 310; 1 L.W. 191.

no right to charge for prior years as arrears [1]. A rule made by the Government that the Collector has the power to impose prohibitory rates when water is taken without permission is a delegation of the authority to prescribe the rates, which is not warranted by the Act [2]. Its right to make rules having the force of law is only with respect to the rates at which and the manner in which water-cess is to be levied, and does not extend to the decision of the question, whether there is an engagement exempting a land-holder from liability to pay water-cess, which the Civil Court has jurisdiction to decide[3].

---

[1] *Ramachandra Appa Rao* v. *The Secretary of State*, 35 Mad. 197.

[2] *Kamalammal* v. *The Secretary of State*, 8 M. L. T. 171.

[3] *Vadrevu Ranganayakamma* v. *The Secretary of State*, 28 M.L.J. 297.

CHAPTER VI.

BENEFICIAL TENURES.

Existence of beneficial grants.

The existence of beneficial grants, known originally by the Sanskrit name, *manyams*, and latterly by the Arabic term, *inams*, after the Mahomedan conquest, can be traced to a very remote antiquity in India. It was the custom of the Hindu Government to grant assignments of lands, revenue free, or at low quit rents, for the payment of troops and civil officers, for the support of temples and their servants, and charitable institutions, for the maintenance of holy and learned men, or for rewards for public service [1].

Grants by the King and his minister.

Whenever the King made a grant of land, he was required to give a deed or *Sasana* evidencing it. The Hindu lawgivers specify what such deed ought to contain. In the Institutes of Vishnu [2], it is stated "To those upon whom he has bestowed (land), he must give a document, destined for the information of a future ruler, which must be written upon a piece of (cotton) cloth, or a copper plate, and must contain the names of his (three) immediate ancestors, a declaration of the extent of the land, and an imprecation against him who should appropriate the donation to himself and should be signed with his own seal." These grants were made either by the king directly or by his minister (*Sandhivigrahadhikarin*) for and by authority of the king [3]. Both kinds of grants contained similar recitals, except that the latter contained the statement at the end of the fact that the minister wrote or made the grant [4]. In conformity

[1] *Fifth Report*, II. 12; *Elphin, Hist*, 81; *Baden-Powell*, L.R.B. S.53.

[2] Ch. III. 82; *Yajnavalkya*, Ch. I. V. 317-320 *Mandlik's Vya. May and Yajna*, 197.

[3] *Burnell, South-Indian Palâeography*, 108.

[4] *Ibid*, 115.

with the directions contained in the Sanskrit law-books the grants found in South India contained the following clauses : (*a*) the donor's genealogy ; (*b*) the description of the nature of the grant, the people or person on whom it is conferred; the objects for which it is made and its conditions and dates; (c) imprecations on violators of the grant; (d) attestations of witnesses where the grant is not autograph, but rarely [1].

Their application to payment of troops.

When they came to be applied to troops is uncertain. They were in use in Vijianagar and in the States in the South of India when they were overturned by the Mahomedans. Such assignments took two forms, one adopted in the case of settled countries, and the other in the case of foreign conquests. In the former case they were for specific sums equal to the pay due on a district in or near the place where the troops were stationed, instead of an order on the treasury, and when they had long been continued and were large enough to swallow up the revenue of the district, the collection itself was made over to the chief of the military body, taking every precaution that he did not appropriate more than the pay of the troops or exercise any power not usually vested in other Collectors. The power to interfere for the protection of subordinate rights was retained by the Government, as well as a claim to any revenue which the tract assigned might yield beyond the amount for which they were granted, by the appointment of two or more civil officers, directly from the Government, to inspect the whole of the chief's proceedings, as well in managing his troops as his lands. In the latter case a chief was detached by the invaders to occupy a remote part of the country and to maintain his troops on its resources and was allowed to remain undisturbed until his family had taken root and had become tenants on condition of service instead of mere officers on detachment [2]. The origin of other kinds of assignments will be dealt with subsequently under their headings.

[1] *Burnell, South Indian Palæography*, 108.

[2] *Elphin. Hist*, 81, 82.

Practice of the Mahomedan government.

This practice of allotting lands for the above purposes was followed by the Mahomedan Government with whom also it was a frequent custom to provide for its relations and to reward the higher ranks of its officers in the military and civil departments by the grants of large tracts of lands under the name of *jagirs* [1]. This was regularly done in the case of the Moghul officers of state, each of whom held a *mansab i.e.* a title with an assignment of revenue (so many rupees per annum) to support his dignity and also to maintain a certain number of troops, which he had to call out, when he was required to join the imperial standard in war, or on ceremonial occasions, or for duty at court [2]. These *jagirs*, generally, if not always, reverted to the State on the death of the grantee, unless continued under a new sanad, for the alienation in perpetuity of the rights of the Government in the soil was inconsistent with the established policy of the Mahomedans, from which they deviated only in the case of endowments to religious establishments, and officers of public duty, and in some rare instances, of grants to holy men, and celebrated scholars [2]. These grants were known as *milk* grants, that is, those which gave title to the land. A bit of land was granted revenue free, or the land was already owned by the grantee and the revenue thereon was remitted [3].

Its adoption by the English.

During the earlier period of British rule, the Government of the day following the custom of the country, adopted the practice of rewarding meritorious services by grants of *jagirs*. This practice, however, gradually fell into disuse after the receipt of despatches from the *Court of Directors* dated 2nd January, 1822 and 27th May, 1829, in which they expressed their opinion of the superior propriety of money pensions to grants of land on all ordinary occasions and directed that grants of land should be restricted to special cases [4].

Inams.

These beneficial grants are now known as *inams*, an

[1] *Fifth Report*, II. 14.
[2] *Baden-Powell*, L. R. B. I. 54.
[3] *Baden Powell*, L. R. B. I. 53.
[4] *Man of Adminis.* 1. 166, *note* 1.

Arabic term introduced into India after the Mahomedan conquest, the term in use before that date being *manyams*. The term *manyam* is now applied in South India to land held either at a low assessment or altogether free, in consideration of services done to the state or community, as in the case of the officers and servants of the village. This is the definition of that word given in Wilson's Glossary [1], which represents the later signification of the term after the introduction of the Arabic term *inam*. The word *inam* literally means a gift. Wilson [2] defines it thus : "In India, and especially in the south, and amongst the Mahratas, the term was specially applied to grants of land held rent-free, and in hereditary and perpetual occupation: the tenure came in time to be qualified by the reservation of a portion of the assessable revenue, or by the exaction of all proceeds exceeding the intended value of the original assignment; the term was also vaguely applied to grants of rent-free land, without reference to perpetuity or any specified conditions. The grants are also distinguishable by their origin from the ruling authorities, or from the village communities, and are again distinguishable by peculiar reservations, or by their being applicable to different objects." In former times the distinction between a *jagir* grant and an *inam* grant was that the former was a larger political grant implying conditions of service and the latter a smaller personal grant with no condition of service [3]. The word *inam* is a generic term applicable to all Government grants as a whole [4], but, in course of time when that word alone was used without any sort of qualification or restriction, it came to denote a grant in perpetuity not resumable [5].

In a former chapter it has been shown that the sovereigns of India, ancient or modern, did not claim anything more than a share in the produce of cultivated

Inam, *prima facie* grant of land revenue.

[1] 330.

[2] *Glossary*, 217.

[3] *Baden-Powell*, L. R. B. I, 118, 119.

[4] *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmasamy Venkatadry Naidu*, 7 M. I. A. 128; *Raghojirao Saheb* v. *Lakshmanrao Saheb*, 36 Bom. 639 : 39 I. A. 202.

[5] *Unide Rajaha Raja Bommarazu Bahadur* v. *Pemmasamy Venkatadry Naidu*, 7 M.I.A, 128.

lands, and that their right consisted in their power to collect a share of the produce therein [1]. Therefore, when the State makes a grant in favour of individuals or religious or charitable institutions the presumption is that it intends to convey only its right to the grantee, which is the right to receive the royal share of the produce [2]; and the rights of other persons in the soil, such as village land-holders, permanent tenants, district and village officers, and of persons holding by previous grants under it, remain unaffected by the grant [3], even though their rights are not expressly reserved [4]. In *Krishnarao Ganesh* v. *Rangarav*[5], *Westropp, C.J.* observed "Sanadi grants in *inam*, *saranjam*, *jagir*, *wazifa*, *wakf*, *devesthan* and *sevasthan*, are, generally speaking, more properly described as alienations of the royal share in the produce of land *i.e.*, of land revenue, than grants of land, although in popular parlance, occasionally so called." The Privy Council has lately held in *Raghojirao Saheb* v. *Lakshmanrao Saheb* [6] that a grant in *jagir* rarely imported a grant cf the soil and the principle of the decision applies to other kinds of grants also. Therefore the grantee of an *inam* from the Government is, *prima facie*, entitled only to land revenue *i.e.*, melwaram [7]; *a fortiori* is the grantee from the zemin-

[1] *Ante*, Chap, I. pp. 11. 12; *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299 (301).

[2] *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299 (301).

[3] *Munro*. I. 142; *Wilks*, I. 82; *Elphinstone*, 81; *Mirasi papers*, 91; *Bheema Shunker* v. *Jamas-Jee Shapor-Jee*, 2 M.I. A. 23; *Rama* v. *Subba*, 12 Mad. 98; *Lakshminarasimha Appa Rao* v. *Sitaramaswami*, 24 M. L. J. 288; *Nasarvangi Hormsji* v. *Narayan Trimback*, 4 Bom. H. C. R. (A. C.J.) 125; *Vyakunta Bapuji* v. *The Government of Bombay*, 12 Bom. H. C. R. App. 1; *Ravji Narayan Mandlik* v. *Narayan Trimback*, 1 Bom. 523; *Babaji* v. *Narayan*, 3 Bom. 340; *Himat Singji Joravarsingji* v. *Bhavabhai Kayabhai*, 4 Bom. 643; *Kamaldin Husen Khan* v. *Partap Mota*, 6 Bom. 244 (249, 250).

[4] *Mirasi Papers*, 91; *Ravji Narayan Mandlik* v. *Narayan Trimback*, 1 Bom. 523; *Himat Singji Joravardingii* v. *Bhavabhai Kayabhai*, 4 Bom. 643.

[5] 4 Bom. H. C. R. (A. C. J.) 1.

[6] 36 Bom 639: 39 I. A. 202

[7] *Yerrayya* v. *Kangali Naidu*, 34 Mad. 246; *Lakshminarasimha Appa Rao* v. *Sitaramasami*, 24 M. L. J. 288; *Suryanarayana* v, *Potanna*, 38 Mad. 608 : 26 M. L. J. 99 : 15 M. L. T. 268; *Govinda Reddi* v. *Ravi Kesaval Naidu*, 29 I. C. 1003; *Krishnarav Ganesh* v. *Rangarav*, 4 Bom. H.C.R. (a.c.j.) 1; *Vaman Janardhan Joshi* v. *The Government of Bombay*, 6 Bom. H C. R. (a. c. j.) 191; *Ramachandra Mantri* v. *Venkatarao*, 6 Bom. 598; *Rajiya* v. *Balkrishna Ganghadhar*, 29 Bom. 415,

dar, whether the grant was made before [1], or after [2], the permanent settlement, as he himself is only the assignee of the rights of the Government [3]. The same presumption applies to grants of minor inams also [4]. But the Government may have vested in it according to the custom of the country proprietary right *i.e.* right to the soil comprising both the melwaram and the kudiwaram in the lands granted as *inam*, as in the case of unoccupied waste lands, or of lands made available to the state, either by surrender or abandonment by the occupier [5]. It may either grant proprietary right to the grantee, or grant the right to land revenue alone to him and the right of the occupant to another [6], but it is not to be presumed that it intended to split its ownership into two interests and confer its right alone on the grantee [7]. What is his right in the waste? The decisions are not uniform on this matter. The Bombay High Court has held that an inamdar to whom the proprietorship of the soil has not been granted is entitled to make as much revenue as he can out of unoccupied lands, not because he is the owner of the soil, but because he is the grantee of revenue [8]. The same view was apparently taken by *Sir Arthur Collins C. J.* and *Muthuswamy Ayyar, J.* in *Rama* v. *Subba* [9], who held that the interest that passed in waste land or land relinquished by

Interest of the inamdar in waste.

[1] *Venkataramiah* v. *Narayudu*, 12 M. L. T. 313.

[2] *Yerrayya* v. *Kangali Naidu*, 34 Mad. 246; *Bhadrayya* v. *Bapayya*, 21 M. L. J. 803; *Lakshminarasimha Appa Rao* v. *Sitaramasami*, 24 M. L. J. 288; *Venkatanarasimha Appa Rao* v. *Subba Reddi*, 24 M. L. J. 655; *Narasimha Charyalu* v. *Ramabrahmam*, 24 M. L.J. 656; *Suryanarayana* v. *Potanna* 38 Mad. 608: 26 M. L. J. 99; 15 M. L. T. 268; *Kasidoss Subraya* v. *Narayana Reddi*, (1915) M. W. N. 209; *Ambalavana Pandarasannadhi* v. *Kuppachi Janaki Ammal*, 26 I. C. 618; *Visvanadha Rao* v. *Chinnakolandai Nainar*, 1 L. W. 197.

[3] *Venkata Mahalakshmamma* v. *Ramajogi*, 16 Mad. 271; *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*, 20 Mad. 299; *Narayana Ayyangar* v. *Orr*, 26 Mad. 252.

[4] *Suryanarayana* v. *Potanna*, 38 Mad. 608: 26 M.L.J. 99: 15 M.L.T. 268; *Visvanadha Rao* v. *Chinnakolandai Nainar*, 1 L. W. 197.

[5] *Munro* I. 143; *Rama* v. *Subba*, 12 Mad. 98; *Jeeyamba Bai* v. *The Secretary of State*, 23 M.L.J. 687.

[6] *Jeeyamba Bai* v. *The Secretary of State*, 23 M. L. J. 687.

[7] *The Secretary of State* v. *Subbarayudu*, 23 M. L. J, 728.

[8] *Ramachandra* v. *Venkatarao*, 6 Bom. 598 (608); *Ganpatrav Trimback Patwardhan* v. *Ganesh Baji Bhat*, 10 Bom, 112 (117); *Rajya* v. *Balakrishna Ganghadhar*, 29 Bom. 415 (420); *Balvant Ramachandra* v. *The Secretary of State*, 32 Bom. 432 (438).

[9] 12 Mad. 98.

the occupant for the time being was such as would enable the grantee to realize the revenue due to Government which was the subject of the grant, unless the terms of the grant showed that a larger interest therein was vested in the Government, and that that interest was intended to be conveyed. The other cases in Madras were decided with reference to the jurisdiction of civil courts under the Madras Estates Land Act to entertain suits in respect of waste lands in an inam village. In *Lakshminarasimha Rao* v. *Sitarmaswami* [1], *Sundara Ayyar* and *Sadasiva Ayyar*, JJ. held that, in the case of lands which were waste at the time of the grant, the presumption was that the inamdar was entitled to the entire right in them, and that therefore the kudiwaram therein also was granted to him; the same view was taken by *Seshagiri Ayyar, J.* in *Venkata Sastrulu* v. *Sitaramudu* [2], and in *Vegoti Chengiah* v. *Putta Ramudu* [3]. Subsequently *Sadasiva Ayyar* J. in *Venkata Sastrulu* v. *Sitaramudu* [4] appears to have qualified the view taken by him in *Lakshminarasimha Rao* v. *Sitaramaswami* [1] by holding that, though such lands might be said in a sense to be owned by the inamdar, he did not acquire the kudiwaram right therein, unless he had, before the coming into force of the Estates Land Act, converted them into his private lands, by letting them as such. This view was taken also by *Spencer*, J. in *Suryanarayana* v. *Potanna* [5].

Who are, competent to grant *inams*.

Grants of beneficial tenures being thus alienations of the royal share of the revenue *i.e.* melwaram, it follows that the king alone is competent to make them. Under the native Governments such right was exercised by him or by some officer authorised by him [7]. As long as the king was powerful and able to control his officers, no alienation of his right was possible without his consent

[1] 24 M.L.J. 288.

[2] 38 Mad. 891: 26 M.L.J. 585.

[3] (1914) M.W.N. 367; the same view is taken in the case of waste in a zemindary by *Sir John Wallis C.J.* and *Seshagiri Ayyar, J.* in *Arunachala Ambalam* v. *Orr, 29 I.C. 634*, in which it was held that in the case of waste jungle, it was for the tenant to show that he had the kudiwaram right.

[4] 38 Mad. 891:26 M.L.J. 585.

[5] 38 Mad. 608: 26 M.L.J. 99: 15 M.L.T. 268.

[6] *Preamble to Regulation*, XXXI of 1802.

or authority; but when his power grew weak, or was not felt, his sanction was either an empty formality or not even obtained. Therefore, during the periods of anarchy which followed the overthrow of the native dynasties and continued for some time after the establishment of the Mahomedan rule in South India, and of the political confusion which ensued in the latter half of the eighteenth century, the power of granting beneficial tenures for numerous miscellaneous purposes was assumed by various petty chiefs, zemindars, foujdars, poligars, and even by renters in the Northern Circars; sometimes they were obtained through the collusion of revenue officers [1].

Zemindars' power to create *inams.*

As the zemindars and poligars had not, before the permanent settlement, any property in their zemindaries and palayams, they could not validly create beneficial tenures and the only effect of the permanent settlement on them has been to convert the precarious tenure under which they held their property into a permanent, heritable, and transferable one. The permanent settlement having been made exclusive of alienated lands, pre-settlement inams as they are called, the zemindars' or poligars' connection with them ceased then. Section 12 of Regulation XXV of 1802 distinctly states that it is not competent to a land-holder to resume beneficial grants known as lakhiraj lands. In some cases, however, the jodi or quit rent payable on certain alienated lands has been included in the assets of the zemindary in fixing the peishcush; then the zemindars' only connection with them is the collection of the jodi or quit rent, the right of resuming them being vested in the Government. In some other cases, the full rental of the alienated lands is included in the assets, in which case the zemindar has got the right of resuming them. After the permanent settlement, the zemindar has no right of creating beneficial tenures in favour of religious, charitable, or other purposes, so as to exempt them from bearing their portion of land revenue, without the permission of the Government being previously

[1] *Man of Adminis*, I. 166 (note 1); *Fifth Report*, II. 14.

obtained [1]. Any creation of beneficial tenures subsequent to the permanent settlement is not really an *inam* in the proper sense of the term, but is really a gift or lease at a favourable rent, which does not result in an abatement of the peishcush, but on the other hand is liable to be proceeded against for default of payment of peishcush by the zemindar.

Construction of beneficial grants.

The rules of construction governing Crown grants are applicable to these beneficial grants. Where the terms of the grant are plain and unambiguous, the ordinary rule of construction as between subject and subject applies also as between the Crown and the subject; and in such cases, it is always a question of intention to be collected from the language used with reference to the surrounding circumstances[2]. *Contemporanea expositio* can be resorted to in the interpretation of such grants[3], and aid may be sought for in the surrounding circumstances, and the occasion on which, and the object for which, the grant was made[4]. But all the considerations applicable to grants from private persons do not apply to grants by the state[5]. Where the terms of the grant are doubtful or ambiguous, the ordinary rule as between subject and subject that a doubtful grant is to be construed in favour of the grantee does not apply, but it is construed against the grantee and beneficially to the Crown, and nothing will pass to the grantee, except by clear and express words [6], and even language of general import will be taken most beneficially to the Crown. This rule of construction applies also to grants made by native Governments and confirmed by the British Government[7].

[1] *Section 12, Regulation* XXV of 1802.

[2] In re *Antaji Keshav Tamer*, 18 Bom. 670 (676).

[3] *Raghojirao Saheb* v. *Lakshmanrao Saheb*, 36 Bom. 639: 39 I.A. 202.

[4] *Dosibai* v. *Ishvardas Jagjivandas*, 9 Bom. 561; affirmed by the P. C. in *Dosibai* v. *Ishvardas Jagjivandas*, 15 Bom. 222: 18 I.A. 22; *Guabdas Jagjivandas* v. *The Collector of Surat*, 3 Bom. 186 : 6 I. A. 54.

[5] *Gulabdas Jagjivandas* v. *The Collector of Surat*, 3 Bom. 186: 6 I. A. 54.

[6] *VamanJanardhan Joshi* v. *The Collector of Thana*, 6 Bom. H.C.R. (A.C.J.) 191; *The Collector of Ratnagiri* v. *Antaji Lakshman*, 12 Bom. 534 (544); In Re *Antaji Keshav Tamer*, 18 Bom. 670 (676); *Suryanarayana* v. *Potanna*, 38 Mad. 608: 99: 15 M.L.T. 268; *The Secretary of State* v. *Janakiramayya*, 29 M.L.J. 389.

[7] *Vaman Janardan Joshi* v. *The Collector of Thana*, 6 Bom. H. C. R. (A. C. J.) 191.

Proof of proprietorship of the soil under the original grant.

Beneficial grants being alienations of land revenue only, unless the grant contains words expressly granting the ownership of the soil to the grantee, that ownership does not pass, and the burden of proving that it is, in a particular case, a grant of the soil lies very heavily on the party alleging it [1]; but if words are employed in the grant which expressly or by necessary implication, indicate that the Government intends that, so far as it may have any ownership of the soil, that ownership shall pass to the grantee, neither the Government, nor any person subsequently to the date of the grant deriving from the Government, can be permitted to say that the ownership of the soil did not pass [2]. The question whether there is, in any particular case, a grant of the soil or merely of land revenue, becomes material in considering the applicability of the Pensions Act, and the right of the grantee to underground rights and forests. A grant of a village which recited that it "has been conferred on you as *inam*, to be enjoyed by you, your son and grandson from generation to generation. The Government dues of this village, *viz.* koolbab koolkanoo (*i.e.* all taxes and assessments), present taxes, and future taxes, together with the house tax, but exclusive of the haqs due to hakdars shall continue to be debited to you from year to year" is only a grant of land revenue" [3]; so also a grant which recited, "total of 60 velies of land including wet and dry lands, water, trees, stones, Nidhi, Nikshepa (treasure), Sidha, Sadhya (whatever is and may be brought into existence), present and future patti, all baub and all kana with all samudayams with water poured from the hand. Boundaries to be fixed and the land made dumbala" is only a grant of land revenue within the meaning of the Pensions Act [4]. But the grant of a village which stated that it was granted in *inam* including the waters, the trees, the stones (including quarries), the mines, hidden treasures therein but excluding hakdars and inamdars conveys the

[1] *Ramachandra* v. *Venkatarao*, 6 Bom. 598 (606); *Rajya* v. *Balakrishna Gangadhar*, 29 Bom. 415.

[2] *Ravji Narayana Mandlik* v. *Dadaji Bapuji Desai*, 1 Bom. 523.

[3] *Vaman Janardhan Joshi* v. *The Collector of Thana*, 6 Bom. H.C.R. (A. C. J.) 191.

[4] *Jeeyamba Bai* v. *The Secretary of State*, 23 M. L. J. 687.

proprietorship of the soil[1]. The exclusion of the rights of the hakdars and inamdars does not prevent the proprietorship of the soil from passing[2], though the grant of a village by itself may mean the grant of land revenue alone[1]. The grant of a village which mentioned its boundaries and recited that within those boundaries, the wet lands, dry lands, Samudayam, village site, temple, palmyras, and other trees, groves, wells, immemorial waste, tanks, mines, treasures, waters, trees, stones, what is obtainable and what is desirable, were granted, does not convey any right to a channel passing from one government village to another through the inam village[3]. When a village is granted in *inam*, but no limits or boundaries are given, and waste lands are expressly included, the statement of average revenue following the grant must be read as a mere description and cannot be taken to affect the universality of the grant to the lands then actually assessed[4]. In *Rama* v. *Subba* [5], it was observed that the clause in a grant limiting it to the grantee and his heirs as long as they remained faithful to the Government and obedient to the regulations that might be passed prevented the ownership of the soil from passing. But this observation can, no longer, have any force in view of the decision of the Privy Council in *Ganpat Rao* v. *Anant Rao*[6] affirming the decision of the Allahabad High Court[7].

Under the inam title deed.

So far we have dealt with the rights conveyed under the original grant. We now proceed to deal with the rights conveyed under the title deed granted by the Inam Commissioner at the time of the Inam Settlement. The effect to be given to the insertion of the words "besides poramboke" in an inam title deed depends on the evidence available in each case and the circumstances attending

[1] *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai*, 1 Bom 523.

[2] *Ibid*; *Vasudev Pandit* v. *The Collector of Puna*, 10 Bom H.C.R. 71.

[3] *Ambalavana Pandara Sannadhi* v. *The Secretary of State*, 28 Mad. 539.

[4] *Balvant Ramachandra* v. *The Secretary of State*, 32 Bom. 432.

[5] 12 Mad. 98.

[6] 32 All. 148.

[7] *Ganpat Rao* v. *Anant Rao*, 2? All 104.

each grant[1]. In *Narayanasami Naidu* v. *The Secretary of State* [2] it was held that the insertion of those words in the title deed of a village previously granted on srotriyam tenure to the grantee on the abolition of the office of nautwar which was hereditary in his family did not, in the absence of express words to that effect, convey any right to the bed of the river passing through the village; while in *The Secretary of State* v. *Venkataratnammah* [3] it was held that insertion of those words conveyed to the grantee of a whole village all waste and poramboke in the village, including the bed of a channel passing through it, and in *The Secretary of State* v. *Raghunatha Thathachariar* [4] it was held that those words conveyed to the grantee all unassessed waste in the village except communal property, and the padugai lands which were found to be the lands between the flood bank and the sandy bed of the stream. A jagirdar within whose limits certain hills are situated is entitled to them, even though the inam title deed does not expressly convey them, nor the income derivable from them and similar uncultivated porambokes was taken into consideration at the time of the inam settlement [5].

Inamdars' right to minerals.

The holder of an *unenfranchised* inam is entitled to work the minerals thereunder without payment of any royalty, if the grant conveys expressly or by necessary implication a right thereto[6], and the grant of the proprietorship of the soil gives him that right [7]. The holder of a rent free village granted as *brahmottar* (grant in favour of Brahmans) situated within a zemindary has no right to the minerals

[1] *The Secretary of State* v. *Venkataratnammah*, 37 Mad. 364 : 23 M.L.J. 109: (1912) M. W. N. 496; *The Secretary of State* v. *Raghunatha Thatha Chariar*, 38 Mad 108: 24 M.L. J. 31: (1913) M. W. N, 261.

[2] 24 M. L. J. 36.

[3] 37 Mad. 364 : 23 M.L.J. 109 : (1912) M.W.N. 496.

[4] 38 Mad 108: 24 M.L.J. 31 : (1913) M.W.N. 261; see *also Balakrishna Rao* v. *The Secretary of State*, 29 M.L.J. 276; 2 L.W. 695.

[5] *Nawab Ajajudin Alli Khan* v. *The Secretary of State*, 28 Mad. 69.

[6] S. O. 25, Section (1) 1 (c).

[7] *Vaman Janardhan Joshi* v. *The Collector of Thana*, 6 Bom. H.C.R. (A.C.J.) 191 (201); *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai*, 1 Bom. 523.

Enfranchised inam.

underground, unless there is a grant thereof to him [1]. As regards the right of the owner of an enfranchised inam to whom a title deed has been issued by the Inam Commissioner, it was conceded absolutely to him by the Government till the year 1905, when a qualification was added that he was entitled to them only if the right thereto had been granted expressly or by necessary implication by the original grant, apart from the title deed [2]. The question arose in *The Secretary of State* v. *Srinivasa Chariar* [3] whether the grantee of land revenue alone of a whole inam village to whom the freehold therein had been granted by enfranchisement was liable for royalty on minerals worked therein. There was a difference of opinion between *Sadasiva Ayyar, J.* and *Spencer J*; *Sadasiva Ayyar, J.* holding that he was not liable and *Spencer, J.* holding that he was, and the matter is now pending in the High Court in a Letters Patent Appeal. In Bombay it has been held that the Collector has no right under such circumstances, to quarry stones or take sand within the limits of the inam village and is liable in damages if he does so [4].

Major and minor inam.

Beneficial grants may be of a whole village, or a number of villages or of only certain lands therein. When a grant was made of a whole village, it was known as *dehaut* and is technically called a *major inam* [5]; when only some lands in a village were granted, it is known as a *minor inam*; when a large block of land was granted less than a village, but much larger than an ordinary inam, it was called a *khandriga* [6] or *pohal shrotriyam*, which ranks as a minor inam [7]; when a village already under cultivation was granted, it is known as a *monje* village [8]; and when a large section of land was granted as *inam* on which a hamlet has been built but which was not recorded in the revenue accounts separately from the village within the limits of which it was situated, it is known as *gramagarbha khandriga*.

[1] *Jyoti Prasad Singh* v. *Lachipur Coal Company*, 38 Cal. 845; *Kunja Behary Seal* v. *Durga Prasad Singh* 42 Cal 346; *The Nowaghur Coal Co. Ltd.* v. *Sashi Bhushan Ray*, 19 C. W. N. 375.

[2] S. O. 25 Sect. (i) 1 (c);

[3] 15 M.L.T. 277.

[4] *Vasudev Pandit* v. *The Collector of Puna*, 10 Bom H.C.R. 471.

[5] *Man of Adminis.* III. 264, 352.

[6] *Ibid*, 413.

[7] *Ibid*, 352.

[8] *Venkata Sastrulu* v. *Sitaramudu*, 38 Mad, 891; 26 M.L.J. 585.

Tarapadi and Sanad inams.

These grants are divided into two classes according to the date of their creation, *Tarapadi inam* or *manyam* and *Sanad* or *Dumbala inam* or *manyam*. A *Tarapadi inam* is one granted at the original formation of a village for village purposes, comprising grama manyams, the inams enjoyed by the village, revenue, police, and private servants and the village pagodas and having their authority in the village register [1], or one inherited or held from an uncertain period as an independent right [2]. They might have been granted either by the king or the village community, probably by the latter. This term is used in contradistinction to the *Sanad* or *Dumbala* inam, which is one that is held by a specific grant from the ruling power, either by individuals, or by religious or charitable institutions. The Sanad grants made by the Hindu Government of Tanjore were of three kinds [3], (1) *Sikka Sanads*, that is, grants in the regular form of deeds of gift. Money allowances enjoyed under *Sikka Sanads* were called *ayakat manyams*. (2) *Daftar Rokhas*, that is, memoranda prepared in the account department of the Palace stating the purport of the applications for inam grants, on which an order is endorsed to the effect that the application is granted. (3) *Arz Rokhas*, that is, applications themselves endorsed as above. A peculiar form of *inam* called *Gramabhagam* is found in the Tanjore District. It was really compensation paid to the mirasidars for waste lands in the village granted in inam by the Government [4]. A kind of *sanad* inam seems to have been prevalent in the Jagir (Chingleput) which had its origin entirely under the Mahomedan Government, by which small portions of lands were held by sanads or orders renewable from year to year, and which were probably given in liquidation of the pay to servants and dependents, as well as for expenses of mosques, and for the maintenance of those who attended them, and the title to which ceased if no sanad was issued [5].

Sarva inam.

These grants may vary according to the degree of benefit intended to be conferred on the grantee. They may

[1] *Man of Adminis, III.* 356.
[2] *Wilson*, 330, *title, manyam.*
[3] *Tanjore Dt. M.* 674.
[4] *Man of Adminis*, III. 354.
[5] *Mirasi Papers*, 56.

be (1) of the whole revenue or, (2) of a portion thereof or, (3) subject to a payment in money. The first class of grants is known as *Sarva inam*, *Sarvamanyam* or *Sarva dumbala inam*, which means that the lands are held free of all assessment. This kind of *inam* was granted generally in favour of religious and charitable institutions, or in favour of learned and pious persons, or in favour of decayed noble families. While originally *Srotriyam* grants could apply only to grants made to Brahmans skilled in the Sruti or Vedas, though in latter times they were applied to grants made to other classes of persons as well, *Sarva inams* could be conferred on any person and under any circumstances [1]. Generally they were made both of the revenue and of the land, and if the grantee was already in possession of it, the revenue thereon was remitted in his favour. As these grants conveyed a right to the soil, that is, the right of the occupants also, it was said that they could be created only by the joint act of the Crown and the occupant [2]. Therefore, whenever a *Sarvamanyam* grant of lands which were not waste, or at the disposal of the government was made, the right of the occupant was purchased and made over to the grantee, and if this was not done at the time of the grant, provision was made in the deed for such purchase [3]. Strictly speaking, if the right to the soil did not pass by this kind of grant, it was not known as *Sarvamanyam* but only as *ardhamanyam* [4]. It has been held that the grant of a *Sarvamanyam* with *ashtabhogam* did not, by itself, convey a right to the soil, but only meant that the entire government revenue was granted, as distinguished from *ardhamanyam* [5]; so also in the case of the grant of a *sudda* inam [6]. But considering the circumstances under which such grants were made, the presumption might have been drawn otherwise.

The second class comprises,

[1] *Mirasi Papers*, 220.
[2] *Ibid*.
[3] *Tanjore* Dt. M. 399.
[4] *Mirasi Papers*, 220; *Wilson*, 31.
[5] *Parankusa Zatindra Mahadesikaswami* v. *Subramania Pillai*, 26 I. C. 117.
[6] *Seshagiri Iyer* v. *Tirumalai Ambalam*, 17 I.C. 481.

(a) *Ardhamanyam*, lands held half rent free [1]. The term is also used to lands held partly rent free [2], and to a grant of the government share to one who does not own the right to the soil [3]. Ardhamanyam.

(b) *Chaturbhagam*, known also *Patika badi*, inam consisting of one-fourth share of the Government revenue [4]. Wilson defines it as "the fourth part of the annual crop received by Government from the holders of certain alienated lands. According to the definition of the term as applied in the Tamil provinces, it is a grant or alienation of the Government fourth in favour of the holder of the land [5]." Chaturbhagam.

(c) *Muppatika-badi*, lands held at three-fourths of usual assessment [6]. Muppatika-badi.

(d) *Rayayat Mukhasa*, mukhasa villages held on a favourable assessment fluctuating with the cultivation of each year [7]. Rayayat Mukhasa.

(e) *Tribhagam*, inam consisting of one-third share of Government produce. Wilson defines it as "a third of the annual crop payable to the government" [8]. Tribhagam.

The third class comprises lands held subject to the payment of a light quit rent or jodi, called also *bediga*, *poruppu* [9], *kattubadi*, when they are known as *jodi* etc. villages, the benefit which the grantee derives being the difference between the full assessment and the favourable assessment imposed on them. It comprises,

(a) *Bil makta inam*, lands held at a fixed rent below the usual standard[10]. Wilson [11] defines it thus: "In the Northern Circars it was applied to a fixed quit rent or revenue assessed at a rate below the usual standard. In the South it implies land or a village held at a fixed rent." Bil makta inam.

[1] *Man of Adminis*, III. 352,
[2] *Wilson*, 31.
[3] *Ibid.*
[4] *Man of Adminis*, III. 353.
[5] *Glossary* 104.
[6] *Man of Adminis*, III. 355.
[7] *Ibid*, 356.
[8] *Glossary*, 525.
[9] Poruppu is quit rent subsequently levied on inams originally granted revenue free, *Wilson*, 421; *Man of Adminis*, III. 711.
[10] *Man of Adminis*, III. 356.
[11] *Glossary*, 87.

Hungami jodi.

(b) *Hungami jodi*, inams fluctuating from year to year according to the produce or extent of cultivation [1].

Kattu-kuttagai

(c) *Kattukuttagai*, lands held at a fixed money rent less than the full assessment.

This kind of grant was also made in return for military services [2].

Kayam jodi: Har Sal makta.

(d) *Kayam jodi* [3]: *Har-Sal-makta* [4], inams held on a fixed quit rent, not subject to variations with reference to the cultivation or produce.

Rokka-kuttagai.

(e) *Rokkakuttagai* or *money rented villages*, villages held on a fixed money payment, the amount of which is somewhat lower than the standard of assessment on Government lands but higher than the jodi, and the favourable tenure consists in the fixity of the tenure [5]. They resemble the *srotriyam* in that they are held on a fixed favourable assessment, but while the latter are grants on professedly low rents, the *Rokkakuttagai* consists simply in a small allotment of Government dues made to holders of certain villages.

Lands are sometimes held on payment of rent in grain, known as

Nelkuttagai.

(a) *Nelkuttagai*, or *grain rented villages*, which are villages on inam tenure charged with a fixed payment in grain below the full assessment, the grain rent being paid in money at the average current selling price of the year [6].

Patam land.

(b) *Patam lands*, wet lands which pay a low assessment in grain [7].

Sometimes grants have no localities at all, such as,—

Anna Srotriyam.

(a) *Anna Srotriyam*, inam villages in which the interest of the inamdar is so many annas out of

[1] *Man of Adminis*, III. 335.

[2] *Venkateswara Yetiappa Naiker* v. *Alagoo Moottoo Servaigaran*, 8. *M. I. A.* 327.

[3] *Man of Adminis*, III. 353.

[4] *Ibid*, 354.

[5] *Tanjore* Dt. M. 675.

[6] *Ibid.*

[7] *Man of Adminis*, III. 355.

each rupee of revenue, the rest going to Government [1].

(*b*) *Dittam*, a deduction of a fixed extent from the annual cultivation of the village, the proportionate revenue demand of which is paid to the inamdar without being brought to account [2]. Dittam.

(*c*) *Ivumanyam*, a grant of a proportion or percentage on any branch of land revenue which fluctuates with the improvement or deterioration of the produce [3]. Ivumanyam.

In contradistinction to these inams having no localities, are *Chekbundi inams* having defined boundaries [4]. Chekbundi inams.

Inams were classified into *Dakala inams* and *Ghair Dakala* inams; the former being those which were entered in any particular register [5] and the latter those which were not so entered [6]. Dakala and Ghair dakala inams.

Another classification is made according to the objects and purposes for which they were granted, and it is proposed to deal with this classification in detail, so far as it is germane to our purpose. It is made into (*a*) *Personal grants* and (*b*) *Service grants.* Personal and Service grants.

Grants were also made for special purposes, which were known as (1) *Dufter gardens* and (2) *Tope inams. Dufter gardens* were inam gardens entered in the early *dufters* or records in the District of South Arcot and enjoyed as private property without being subject to the ordinary lapse rules [7]. *Tope inams* were lands consisting of a grove of trees that bear fruit [8], and granted to encourage the plantation of trees. The grant may be of the income derivable from the trees (the tax on them), or of the tax due on the land on which they stand. In the former case the grant will cease to exist when the trees cease to exist, and the government will then be entitled to treat the land as altogether free from any claim on the part of the Dufter gardens. Tope inams.

[1] *Man of Adminis*, III. 352.
[2] *Ibid*, 354.
[3] *Ibid*; *Wilson*, 222.
[4] *Man of Adminis*, III. 353.
[5] *Ibid*.
[6] *Ibid*.
[7] *Ibid*, 354.
[8] *Ibid*, 356.

grantee, and as having become ryotwari, subject to the payment of land revenue; and in the latter case the grantee will be entitled to the melwaram or the land revenue, even if the trees cease to exist [1]. Where the inam is of a tope consisting of trees, the inamdar has a right to the trees and can recover their value when they are cut by the tenant [2].

---

[1] *Jagannatha Pandiajiar* v. *Muthiah Pillai*, 14 M.L.J. 477.

[2] *Rama Ayyangar* v. *Jagannatha Pandiajiar*, 38 Mad. 155.

CHAPTER VII.

PERSONAL GRANTS.

Origin of personal grants.

Personal grants are those made for the support or subsistence of the grantee and took the shape of an assignment of land or land revenue, as this was the mode of conferring benefit adopted in ancient days. They were granted in favour of pious and learned Brahmans, officers of state as a means of support in their old age, and persons unable to earn their livelihood, such as cripples etc. Though the king was entitled to collect a share of the produce of all cultivated lands, he was enjoined not to take any tax from Brahmans learned in the Vedas. *Manu* said " A king even though dying *with want*, must not receive any tax from a *Brahman* learned in the Vedas, nor suffer such a Brahman, residing to his territories to be afflicted with hunger "[1] :—" The king, having ascertained his knowledge of scripture and good morals, must allot him a suitable maintenance, and protect him on all sides, as a father protects his own son " [2], and *Vishnu* also said "Let him not levy any tax upon Brahmans" [3]. It is very interesting to note the reason for the exemption of a certain class of persons. According to *Manu*, " By the religious duty, which such a Brahman performs each day, under the full protection of the sovereign, the life, wealth, and dominions of his protector shall be greatly increased " [4], and *Vishnu* puts it more clearly, " For they pay taxes to him in the shape of their pious acts"[5] .

Hereditary grants.

Originally these grants were revenue free and hereditary in the grantee's family. The reservation of a portion

[1] *Manu*, ch. VII. v. 133.
[2] *Manu*, ch. VII. v. 135.
[3] *Institutes*, ch. III v. 26.
[4] *Manu*, ch. VII. v. 136.
[5] *Institutes*, ch. III v. 27.

of the revenue on them was made only subsequently [1]. Though they were hereditary in the grantee's family, certain conditions were implied in the nature of the tenure. They are thus stated by *Bhashyam Ayyangar J.* in *Gunnaiyan* v. *Kamakshi Ayyar* [2], "According to the theory of the common law of the land applicable to hereditary grants of public revenue as inam in favour of individuals and to the interpretation of such Crown grants, succession, in such cases, is, or at any rate is supposed to be, limited to the undivided brothers and to the direct lineal heirs, including a daughter's son, of the last incumbent, as also his widow and failing them, to the direct lineal heirs of the original grantee. And under that law, it is or it is supposed to be, competent for Government to resume personal inams, when the reversion falls in,—in the language of the Revenue Department—when the inam lapses either by the expiration of the lives for which the inam was granted or by reason of the extinction of direct lineal heirs of the body of the original grantee or of a forfeiture incurred by alienation to a stranger. The question as to whether the Crown has such prerogative reversionary right in the case of hereditary personal inams has never been subjected to the test of a judicial decision, for the simple reason that claims in respect of personal inams which have not been enfranchised, are exempt from the cognizance of Civil Courts and can be adjudicated upon only by the Governor-in-Council or other executive authority". The term alienation includes mortgage, but a mortgaged inam is not to be resumed without giving the inamdar a reasonable opportunity of redeeming the mortgage [3]. In the case of inams granted for two or three lives, the following is the rule enacted by the Government for their computation: "The generation succeeding the first life will be considered the second life, and the following generation will be considered to be the third life. For instance,

Grants for lives.

[1] *Cf. Wilson's Glossary*, 330; *Baden-Powell*, L. S. B. I. III. 140.

[2] 26 Mad. 339 (345) ; S. O. 56. (1).

[3] S.O. 57 (1), note 2.

A is the original grantee of an inam for three lives: the survivor of his sons C.D.E. who are an undivided family, will be the second life; and the longest surviving son of either C, D, or E will be considered the third life. It is provided, of course, in these cases that the family continues undivided in each generation. If a sub-division of the property should take place in the second generation, the share of any member of the family in that generation who dies without issue will lapse" [1]. At the time of the Inam Settlement an option was given to the holders of the above grants to convert their restricted tenure into freeholds on their agreeing to pay a quit-rent, the rate of which varied with reference to the value and prospect of the reversionary claim of the Government; while no option was given to those who derived their title through adoption, or alienation by gift, purchase or otherwise. In the case of such of them as refused to accept the terms offered by the Government, the grants were merely "confirmed" according to their actual tenure, and were subject to all the restrictions implied in their tenure.

Inam settlement.

Personal grants, when made in favour of Brahmans went by the generic name, *Brahmadayam* which means grants held by Brahmans for their personal benefit, generally free of assessment, though services, almost nominal, were reserved. In the great majority of cases, only small extents of land were granted. Under this head may be classified what are known as (1) *Adhyayanam*: for the service of reciting the Vedas in pagodas; (2) *Bharati*: for the service of reading Mahabarata in pagodas; (3) *Bhattavritti*, an assignment of land or land revenue granted to Brahmans at a low rent or rent free for their subsistence; (4) *Panchangam*: for the service of a calendar Brahman, whose duty it is to announce to the villagers lucky days for commencing to plough and reap, for celebrating marriages and festivals, or engaging in any business; (5) *Puranam*: for the service of reading the Puranams in pagodas; and (6) *Vedavritti*: for reciting the Vedas and teaching them to Brahmans.

Brahmadayam. Adhyayanam. Bharati. Bhattavritti. Panchangam. Puranam. Vedavritti.

In some cases whole villages were given, such as, *Agraharams*, literally meaning lands of which the revenue is

Agraharams.

[1] S. O. 57 (2).

appropriated before it reaches the treasury. An *agraharam* grant is a grant of a village or part thereof made to a community of Brahmans, held either revenue-free under special grants or at a reduced rate of assessment [1]. While *Srotriyam* was granted only to particular families, *agraharam* was granted to a community of Brahmans who might be of different families [2]. It is usually held in *swastiem* or shares, and the holder thereof enjoyed from ancient times, the power of selling, mortgaging or otherwise disposing of it. Any restriction on alienation in an absolute *agraharam* grant is inoperative as being a condition repugnant to the nature of the grant [3]. An *agraharam* grant was made at a single rent, so that all the agraharamdars are jointly and severally liable for it [4], and the mere fact that they hold separately their shares under distinct pattas does not negative their joint liability [5]. But the mere non-payment of rent is no ground for resumption [6]. In *Brett* v. *Ellaiya* [7], where an *agraharam* village was held in severalty, and separate pattas were issued to each sharer, and on default of one of the sharers in the payment of revenue due on his share, the Government increased the revenue on the other sharers, the Privy Council observed, "But in this particular case the Government claims a right to increase the assessment on one who holds under an ancient and permanent tenure (for that averment is not denied) by reason of a default not arising from himself or any person holding his share. This is not a common incident of tenure and is not involved in the right to hold the whole lands as hypothecated for the whole rent, though shares are held in severalty and subject to several assessments." The conditions as to rent are usually denoted by the term prefixed to such grants [1] *viz.*

[1] *Wilson* 11 ; *Man of Adminis*, III. 11.

[2] *Baden Powell*, L. R. S. I. III. 14.

[3] *Anantha Tirtha Chariar* v. *Nagamuthu Ambalagaran*, 4 Mad. 200.

[4] *Brett* v. *Ellaiya*, 13 M. I.A. 104 ; affirming *Ellaiya* v. *Collector of Salem*, 3 M. H. C. R. 59 ; *Zemindar of Ramnad* v. *Ramamany Ammal*, 2 Mad. 234 ; *Sobhanadri Appa Rao* v. *Gopala Kristnamma*, 16 Mad. 34.

[5] *Brett* v. *Ellaiya*, 13 M. I. A. 104.

[6] *Umide Rajaha RajaBommarauze Bahadur* v. *Pemmasamy Venkatadry Naidu*, 7 M. I. A. 128; *Ellaiya* v. *Collector of Salem*, 3 M. H.C.R. 59.

[7] 13 M. I. A. 104.

Bil makta agraharam (1): In the Northern Circars, it implies an *agraharam* held at a fixed quit-rent or revenue assessed at a rate below the usual standard ; in the South it implies land or a village held at a fixed rate; (2) *Kattubadi* or *Jodi agraharam*, a village assessed at a quit rent; (3) *Putla Kattubadi agraharam*, a village held subject to a quit-rent payable at a certain rate per putti of produce; (4) *Sarva agraharam*, village held free of all tax; (5) *Trishwaikam*, village in which one-third part of the produce is given for rent.

Dharma-sanam.

Dharmasanam resembles an *agraharam*. It is granted in favour of Brahmans for their subsistence on payment of a fixed favourable rent [1] and held by them in shares. It is also made at an entire rent [2].

Poruppu Village lands.

Poruppu village lands are found in the Madura District. They are lands comprised in villages granted to Brahmans, which had been granted originally rent-free and subject to no kind of service. The imposition of poruppu or rent on them from which they were so called, was at a later date, either because the grantees voluntarily subjected themselves to its levy to secure Government protection and quiet possession in disturbed times, or more probably, they were compelled to pay it wherever the Mahomedan conquerors found that the title under which they held them was defective, the poruppu varying according to the amount of nuzzer paid [3].

Srotriyam.

Srotriyam means literally an assignment of land-revenue to a *Srotriya* or Brahman learned in the Vedas; but latterly the term was applied generally to similar assignments to Indian servants of the Government, civil and military, and Hindu and Mahomedan, as rewards for past services [4]. A *Srotriyam* grant gives no right over the lands, and the grantee is only entitled to land revenue and cannot interfere with the occupants as long as they pay the establish-

[1] *Man of Adminis, III.* 354.

[2] *Zamindar of Ramnad* v. *Ramamany Ammal*, 2 Mad. 234.

[3] *Madura Dt. M.* Part IV. Ch. VI. 140.

[4] *Wilson*, 490; *Madura Dt. M.* Part IV. 47; *Sundaramurti Mudaly* v. *Vallanayakki Ammal*, 1 M.H.C. R. 465.

hed rent [1]. It is liable to resumption and forfeiture on failure to pay the stipulated rent [2]; and though the grant may be expressed to the grantee and his heirs, each of them takes only a life estate and cannot alienate it beyond his life [3]. A grant of a village in *Srotriyam* to the holder of the office of nattuwar on the abolition of that office, which was subsequently enfranchised by the Inam Commissioner who issued a title deed with the words "besides poramboke" in the margin, does not convey a right to the bed of the river passing through the village [4]. A mirasidar of the Chingleput District is presumably the owner of the kudiwaram, and a grant of a *Srotriyam* to him in 1802 vests in him both the melwaram and kudiwaram [5].

Kairati.

Kairati is a term applied originally to inams held for personal benefit by Mahomedans, and latterly to those held by persons other than Brahmans.

Inam altamgha.

Inam altamgha is "a royal grant under the seal of some of the former native princes of Hindustan, and recognised by the British Government as conferring a title to rent-free land in perpetuity, hereditary and transferable. Although probably originally bearing a red or purple stamp, the colour of the imperial standard or signature became in Indian practice indifferent" [6]. In the view of Sir Thomas Munro, such grants were resumable and no sanctity was attached to them [7], and the contention of the East India Company in *The East India Company* v. *Syed Ally* [8] was to the same effect; but *Westropp, C. J.* in *Krishnarav Ganesh* v. *Rangrav* [9]. has pointed out that the East India Company treated the grant there as one in *jagir* and not *altamgha* and that they admitted that *altamgha inams* were not resumable. The Privy Council [10] has held that *altamgha* grants were

1 *Wilson*, 490; *Narayanasami Naidu* v. *The Secretary of State*, 24 M. L.J. 36; *Chinnan* v. *Kondam Naidu*, 26 M. L. J. 169.

2 *Sundaramurthi Mudali* v. *Velanayakki Ammal*, 1 M.H. C. R. 465.

3 *Ibid.*

4 *Narayanasami Naidu* v. *The Secretary of State*, 24 M. L. J. 36.

5 *Chinnan* v. *Kondam Naidu*, 26 M. L. J. 169.

6 *Wilson*, 19.

7 *Munro* 151.

8 7 M. I. A, 555; *See also Vaman Janardhan Joshi* v. *The Collector of Thana*, 6 Bom. H.C.R. (A.C.J.) 191.

9 4 Bom. H.C.R. (A.C.J.) 1 (5).

10 *UnideRajaha Raja Bommarauze Bahadur* v. *Pemmasamy Venkatadry Naidu*, 7 M. I. A. 128; *Krishnarao Ganesh* v. *Rangarav*, 4 Bom. H.C.R. (A.C.J.) 1.

grants in perpetuity, not resumable. They are partible [1], and alienable [2]. Therefore the grant of a village described to be "a royal grant in perpetuity (*inam altamgha*), free of all tax, to Naru Ganesh, together with the children, without restraint" and granting it to "them (meaning Naru Ganesh and his children) and their descendants in lineal succession, from generation to generation, in perpetuity and for ever" confers on the grantee an alienable estate[3] .But the mere fact that a grant is expressed to be in *inam altamgha* does not convey the proprietary right to the grantee, where, from the other terms of the instrument, it appears that a wakf to religious and charitable purposes is intended [4].No distinction ought to be made between males and females in the computation of their shares in a grant in *altamgha*, when they are entitled to participate in the benefit of an endowment of which the profits alone can he divided, the endowment itself being impartible[5] .

Jagir is a political grant and is rarely found in this Presidency. The institution of the *jagir* was essentially a Mahomedan one, and was not dissimilar to the position occupied by Hindu chiefs in frontier territory. In effect, when a tract of country was distant from headquarters and difficult to manage, the state would appoint a *jagirdar* who would collect and appropriate the revenues, and in return keep the country in order and maintain a body of troops for local or other service [6]. It was also granted on condition of military or political service. This was regularly done in the case of the Moghul officers of state, each of whom had a *mansab*, *i.e.*, a title with an assignment of revenue (so many rupees per annum) to support his dignity, and also to maintain a certain number of troops, which he had to call out, when he joined the imperial standard in war, or on ceremonial occasions, or for duty at Court [7]. They originated in the convenience of giving an assignment on a district near the station of the troops, instead of an

Jagir.

[1] *Krishnarav Ganesh* v. *Rangarav*, 4 Bom. H. C. R. (A.C.J.) 1 (6).

[2] *Ibid.*

[3] *Krishnarav Ganesh* v. *Rangarav*, 4 Bom. H.C.R. (A.C.J.) 1.

[4] *Jewun Doss Sahoo* v. *Shah Kubeer-Ood-Deen*, 2 M. I. A. 390.

[5] *Badi Bibi Sabibal* v. *Sami Pillai*, 18 Mad. 257 (263).

[6] *Baden-Powell*, L.S.B.I. I, 528.

[7] *Baden-Powell*, L.R.B.I. 54, 117; *Field's Landholding*, 241,

order on the general treasury [1]. They were also made for the restoration of lands not under cultivation and also for the support of the relations of the Emperor. A *Jagir* was either conditional or unconditional. *Conditional Jagirs* were those granted to meet the expenses of some office, public or private, or some specified duty, and were held so long as the office or duty subsisted. *Unconditional Jagirs* were those granted independently of any office for the maintenance of the dignity of the holder, and a suitable number of attendars and efficient troops which the *mansabdars* were bound to have in readiness [2]. In the Moghul Empire there were no hereditary dignities[3] and the alienation in perpetuity of the rights of the Government in the soil was inconsistent with the policy of the Mahomedan Government [4]; consequently *Jagirs* were granted either for a stated term, or more generally, for the lifetime of the holder and were liable to forfeiture on failure of the performance of the conditions on which they were granted, or on the holders incurring the displeasure of the Emperor. This was, no doubt, the case when the Emperor was all powerful, but when his power decayed, the *Jagirs* were converted into transferable and alienable estates [5]. Sometimes the grant itself was expressed to be hereditary. A *Jagir* is *prima facie* a personal grant for the life of the donee, though it might be made in terms hereditary [6]. But it is not necessarily a grant for life only[7] .It is sometimes difficult to draw the line of distinction between a *jagir* and an *inam* when the former had been made or suffered to become hereditary [8]. A grant of certain villages to Ardesir and his heirs as *jagir* for ever in consideration of his active and zealous performance of the duties entrusted to him confers an absolute and alienable

[1] *Elphinstone*, 81.

[2] *Field's Landholding*, 741. Wilson 224.

[3] *Field's Landholding*, 742; *Baden Powel* L.S. B. I. I, I. 529.

[4] *Fifth Report*, II. 14.

[5] *Wilson*, 224.

[6] *KrishnaRav Ganesh* v. *Rangrav*, 4 Bom. H. C, R. (A. C. J.) 1(9); *Gulabdas Jagjivandas* v. *The Collector of Surat*, 3 Bom. 186; 6 I.A. 54; *Dosibai Ishvardas Jagjivandas*, 15 Bom. 222: 18 I.A. 22 affirming *Dosibai* v. *Ishwardas Jagjivandas*, 9 Bom. 561; *Ram Saran Lal* v. *Ram Narayan Singh*, 42 Cal. 305.

[7] *Ramachandra Mantri* v. *Venkatarao*, 6 Bom, 598.

[8] *Krishnarav Ganesh* v. *Rangarav*, 4 Bom. H.C. R. (A.C.J.) 1

estate[1] ; and the mere insertion of the words "*in jagir*" will not control the right of alienation inherent in the operative terms of the grant [2]. But where the object and terms of the grant showed that the intention was to make a permanent provision for the family of the grantee, the Privy Council held that each holder took the *jagir* only for life, and that any alienation beyond his life was invalid [3]. In *Shekh Sultan Sani* v. *Shekh Ajmodin* [4], certain *inam* villages and lands with *mukhasa* were granted by the Maharatta rulers as parts of one *Saranjam*, and subsequently under the treaty entered into by the British Government with the Peishwa under which these lands fell to the former, they entered into an agreement with the *Jagirdars* in 1820, which recited that the *jagirs* were to be held by them as personal and military *jagirs*. The Privy Council held that the tenure thereby created was political and the question to whom the *saranjam* or *jagir* was to be granted on the death of the holder was one which exclusively belonged to the Government to be determined on political considerations, and that it was not within the competency of any legal tribunal to question the decision which the Government might pronounce. In *Raghojirao Saheb* v. *Lakshmanrao Saheb* [5], the Privy Council held that a *jagir* was personal and not hereditary, and that it was resumable at pleasure and impartible.

The nature o maintenance grant.

The nature of the maintenance grant is such that, whilst it makes for the immediate members of the family a suitable provision, it prevents by means of the exercise of the right of resumption the estate from being completely swallowed up by the continual demand made upon it, and it is resumable whether it is in the hands of the more mediate, or in those of the more remote, members of the family [6]. Gifts or contracts expressed to be for maintenance are *prima facie* only for the life of the grantee, and are therefore

1 *Dosibai* v. *Iswardas Jagjivandas*, 15 Bom. 222 : 18 I.A. 22.

2 *Dosibai* v. *Ishwardas Jagjivandas*, 9 Bom. 561.

3 *Gulabdas Jagjivandas* v. *The Collector of Surat*, 3 Bom. 186 : 6 I.A. 54.

4 17 Bom. 431: 20 I.A. 50; see also, *Ramachandra Mantri* v. *Venkata Rao*, 6 Bom. 598.

5 36 Bom. 639 : 39 I.A. 202.

6 *Rajah Woody Aditto Deb* v. *Mukoond Narain Aditto Baboo*, 22 W.R. 225 ; *Bhaya Dirguj Deo* v. *Pande Fateh Bahadur Ram*, 3 C.L.J. 521.

resumable on his death [1]. Sometimes they are resumable on the death of the grantor [2]. They may be granted in terms hereditary, but the words "*hamesha* (for ever)" [3] or "as proprietor" [4] in them do not have that effect. But they are not necessarily gifts of life estates [5], and grants for maintenance indefinite as regards duration may be shown by the acts of the parties or the circumstances to be intended to operate in perpetuity [6]. A grant for maintenance made to the grantee and his heirs, generation after generation (*putra poutra paramparayam*), enures for the benefit not only of his lineal, but collateral, heirs as well [7]. Where the members of the grantee's family have, for three generations, held lands without any interference on the part of the grantor, either in the way of confirmation or otherwise, the successive enjoyment of the members of the branch will justify the inference that the original grant, if made in lieu of maintenance, was intended to operate in perpetuity [8]. The grantor may discharge his liability to provide maintenance by granting a lump sum of money or land, in absolute discharge of all claim to maintenance [9], and in such a case, the grantor is discharged of any further claim for maintenance from the grantee and his branch [10]. Where an absolute grant of land is made to the grantee in lieu of maintenance, any provision in the grant of a right of

[1] *Bhavanamma* v. *Ramaswami*, 4 Mad. 193; *Raja Woody Aditto Deb* v. *Mukoond Narain Aditto Deb*, 22 W. R. 225; *Tituram Mukerji* v. *Cohen*, 33 Cal. 203 : 32 I. A. 185; *Prince Mahomed Buktyar Shah* v. *Rani Dhojamani*, 2 C.L.J. 20; *Bhaya Dirguj Deo* v. *Pande Fateh Bahadur Ram*, 3 C.L.J. 521; *Ramachandra Goswami* v. *Jagendra Nath Banerjee*, 4 C.L.J. 399; *Rameshar Koer* v. *Gobardan Lal*, 7 C.L.J. 202; *Nanda Gopal Sinha* v. *Pores Moni Debi*, 17 C. L. J. 464; *Karim Nensey* v. *Heinrichs*, 25 Bom. 563; 28 I.A. 198.

[2] *Anund Lal Singh Deo* v. *Maharaja Dheraj Gurrood Narayan Deo*, 5 M.I.A. 82; *Bhavanamma* v. *Rama swamy*, 4 Mad. 193; *Karim Nensey* v. *Heinrichs*, 25 Bom, 563 : 28 I.A. 198.

[3] *Aziz-un-Nissa* v. *Tasadduq Hussain Khan*, 23 All. 824; 28 I.A. 65.

[4] *Rameshar Bakhsh Singh* v. *Arjun Singh*. 23 All. 194 : 28 I.A. 1.

[5] *Mohim Chandra Moulik* v. *Sarajubala Gupta*, 9 C. L. J. 576.

[6] *Karim Nensey* v. *Heinrichs*, 25 Bom 573 : 28I.A.198.

[7] *Raja of Ramnad* v. *Sundara Pandiaswami Thevar*, 27 M. L. J. 694.

[8] *Salur Zemindar* v. *Pedda Pakir Rajua*, 4 Mad. 371; *Ramachandra Goswami* v. *Jogendra Nath Banerjee*, 4 C. L. J. 399.

[9] *Raja Nursing Deb* v. *Roy Koylasnâth*, 9 M. I. A. 55; *Bhavânamma* v. *Ramaswami*, 4 Mad. 193; *Venkata Kumara Mahiputi Surya Rao* v. *Chellayammi Garu*., 17 Mad. 150; *Prince Mahomed Buktyar Shah* v. *Rani Dhojamani*, 2 C. L. J. 20.

[10] *Raja Nursing Deb* v. *Roy Koylasnath*, 9 M. I. A. 55.

reversion on failure of male issue of the grantee is invalid [1]. The declaration in the grant that the grantee is to provide maintenance for his dependants and servants out of the lands granted, does not render them inalienable [2]. The presumption in the case of maintenance grants is that only the income, that is, the rents and profits, was granted [3], and not the corpus, and therefore, in the absence of words to that effect, the grantee has no right to open minerals or remove them as they are portions of the soil, but can work open mines [4].

Besides these grants, other allotments of land were made for special purposes or services rendered by the grantees, or for the support of particular persons.

Grants for particular purposes or services.

Grants made for particular purposes or services rendered by the grantees,

Adaiyoli manyam, granted for clearing away jungle and bringing it into cultivation.

Arasinage inam, land granted in dower or pin money.

Bagh mari, grant of land to one who killed a tiger.

Baruj: kota kidge, land granted as a reward for building a tower or bastion for the protection of a village.

Danduga, granted by native Governments as compensation to persons who had suffered from heavy and undue exactions being levied on them for the emergencies of the State.

Eruvaka, granted to a person who first ploughed the lands of a village.

Gaddatirwa, lands which were originally on a high level, and which were granted on a favourable assessment in consideration of the difficulty of bringing them under cultivation.

[1] *Venkata Kumara Mahipati Surya Rao* v. *Chellayammi Garu*, 17 Mad. 150.

[2] *Raja Nursing Deb* v. *Roy Koylasnath*, 9 M.I.A. 55.

[3] *Bhavanamma* v. *Ramaswami*, 4 Mad. 193; *Tituram Mukerji* v. *Cohen*, 33 Cal. 203: 32 I.A. 185; affirming *Tituram Mukerjee* v. *Elias F. Cohlodrian*, 1 C. L. J. 517.

[4] *Tituram Mukerji* v. *Cohen*, 33 Cal 203:32 I.A. 185; *Prince Mahomed Buktyar Shah* v. *Rani Dhajamani*, 2 C. L. J. 20; *Christian* v. *Tekaitni Narbada Kunwari*, 9 C. L. J. 421; *Mahadeo Lal* v. *Kulanand Singh*, 19 C.L.J. 241.

Idiga, granted for having planted date trees for the production of toddy.

Irumbukatti, granted as an encouragement to manufacture iron.

Julah hatker, granted to weavers to encourage them to settle in a village.

Meti, granted to a head ryot for encouraging the settlement of ryots in a village.

Nari vetti, granted as a reward for having killed a fox during a chase.

Netturu kattu: *Netturu vèttu*: *Palikkani*: *Raktakodigai*, *Raktamanyam*, *Udarapattu*, granted to the family of a person killed in battle, or as a compensation to a person or his family, who has been wounded or killed in the public service.

Nir Sarihadd, granted to the ryots of a village as compensation for allowing a channel to be dug through their lands for the benefit of another village.

Pellettu, granted to a person who dug the first clod of earth in constructing a new tank.

Pallikattu, granted for founding a village.

Pulikattu, granted under the native government for stopping the tiger's mouth by enchantment and rendering them harmless.

Panguvali: *Pattivali*, granted to a body of coparceners holding a village in common for the encouragement of cultivation.

Sthala: In the District of North Arcot it is synonymous with *Pallikattu* inams; in Trichinopoly and some other southern districts it denotes a certain portion of the cultivated lands, which were set apart as *Sthala* inam for the villagers and appropriated to various purposes common to the village.

Grants for particular persons.

Grants in favour of particular persons.

Bhale log, lands granted revenue free to support the dignity of persons of rank admitted to the court of zemindars by virtue of their position.

Mudavan: *Sappani*, granted for the support of a cripple.

Mutalikan, granted for the support of the dependants and servants of a great man.

Nirvana manyam, granted to a Hindu ascetic who goes about naked.

Rajabandhu inams, granted for the maintenance of the relations of poligars.

Vedar, granted to a hunter as a reward for the display of skill in the chase.

Measures taken to examine title to alienated lands.

It has been shown in Chapter VI that, though the power of granting beneficial tenures belonged to the king and the officers empowered by him in that behalf, it was actually exercised by persons having no authority at all, and consequently lands of considerable extent had been alienated. For the purpose of ascertaining the title of persons holding or claiming to hold lands thus alienated under grants not being *badshai* or royal, Regulation XXXI of 1802 was passed. Section 2 of that Regulation exempted from its operation grants made before certain dates therein mentioned in respect of certain districts, those dates corresponding to the dates of the acquisition of those districts by the British Government [1]. Under this Regulation, Collectors of districts were required to keep registers of exempted lands. Power was given to them to call upon the holders thereof to produce and deliver the deeds and sanads under which they held them, and they were empowered to institute suits for the recovery of exempted lands with the permission of the Board of Revenue. It was declared by Section 8 that no length of time could be pleaded in a suit by Government for the recovery of exempted lands from the holders thereof, and persons holding lands under grants made before the dates therein mentioned were required to register them, whether they were made by competent authority or not. This Regulation, however, remained in practice a dead letter.

[1] *Kumara Tirumalai Naick* v. *Bangaru Tirumalai Sauri Naik*, 21 Mad. 310.

Provision regarding pensions.

As regards pensions, Section 43 of Regulation I of 1803 (Board of Revenue Regulation) provided that the Board of Revenue should not continue the pension of deceased pensioners, without the authority of the Governor-in-Council, and Section 30 of Regulation II of 1803 (Collector's Regulation) provided that "Collectors shall procure lands for native pensioners and invalids, agreeably to the regulations prescribed for that purpose". Thus neither Regulation XXXI of 1802 nor Regulations I and II of 1803 debarred the jurisdiction of Civil Courts from entertaining suits in respect of alienated lands or pensions.

Regulation IV of 1831.

The first Regulation that barred the jurisdiction of Civil Courts in respect of personal grants was Regulation IV of 1831. Section 2 (1) of that Regulation prohibited the Courts of Adawlut from taking cognizance of any claim to hereditary or personal grants, of money, or of land revenue, however denominated, conferred by the authority of the Governor-in-Council, in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zemindaries and poliams forfeited or held under attachment or management by the officers of Government, or as a yeomiah or charitable allowance, or as a pension, and also of any claim for the recovery or continuance of, or participation, in such grants, whether preferred against private individuals, or public officers, unless the plaint was accompanied by an order signed by the Chief or other Secretary to Government, referring the complaining party to seek redress in the established Courts of Adawlut; Clause (2) reserved the power to decide on such claims exclusively to the Governor-in-Council; and Section 3 provided that those grants were not liable to attachment or sequestration in satisfaction of any decree or order of Court, save and except for the discharge of debts or obligation personally incurred by the holder of them. The clause permitting attachment in respect of certain debts was repealed by India Act XXIII of 1838, and the provisions of the Regulation were extended by India Act XXXI

of 1836 to similar grants made by any native Government and confirmed and continued by the British Government. The intention of the Government in passing Regulation IV of 1831 was to give it an opportunity of protecting its reversionary rights in such grants. This restriction on the jurisdiction of Civil Courts in the case of personal grants was removed by Act IV of 1862 when they have been enfranchised, and section 2 of the Act provided that the title deed issued by the Inam Commissioner or an authenticated extract from the Register of the Commissioner or Collector was to be deemed sufficient proof of such enfranchisement.

The Pensions Act.

As the law relating to pensions and grants of land revenue was dispersed in various Acts in different provinces, it was consolidated and re-enacted in the Pensions Act (XXIII of 1871) which repealed in this Presidency Regulation IV of 1831, Section 43 of Regulation I of 1803, and Section 30 of Regulation II of 1803. In this Act the expression "grant of money or land revenue" is defined to include "anything payable on the part of Government in respect of any right, privilege perquisite or office" [1]. Any person having a claim to any pension or grant of revenue must apply to the Collector of the District, or Deputy Commissioner or other officer authorised in this behalf by the Local Government, who is empowered to dispose of such claims in accordance with such rules as the Chief Revenue Authority may, subject to the general control of the Local Government, from time to time, prescribe in this behalf [2]. Section 4 ousts the jurisdiction of the Civil Courts to entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted, unless it receives a certificate from the officers abovenamed authorising the trial of such suit; and no decree or order can be passed therein affecting the liability of the Government

[1] *Section* 3.

[2] *Section* 5.

to pay any such pension [1]. Enfranchised inams are exempted from the operation of the Act [2], and the right of the grantee of land revenue whose claim is admitted by Government to recover the amount of revenue from the persons liable to pay the same is unaffected by the prohibition contained in Section 4 [3]. Section 11 exempts pensions from attachment by process of Court, while Section 12 renders all assignments, agreements, orders, sales, and securities made by the persons entitled to any pension, pay or allowance in respect of any money not payable at or before the making thereof, void.

Scope of the Act.

The Pensions Act is not retrospective [4], and therefore the assignment of a pension executed before the coming into force of the Act is valid [5]. A suit brought by the mortgagee of a *haq* for a declaration that it was liable to be proceeded against in execution of a decree which he had obtained for the recovery of his mortgage debt from the *haq* before the date of the coming into force of the Pensions Act is exempt from its operation [6], but the case is quite different when he has obtained only a money decree and properties are attached under that decree [7]. The Act which purports to deprive the subject of his right to resort to the ordinary courts ought to be construed strictly [8]. The object of the Pensions Act is thus stated in the speech made by the Hon'ble Mr. Cockerell in introducing it in the Imperial Legislative Council, [9] "The leading principle of the main provisions

Its construction.

Its object.

[1] *Section* 6.

[2] *Section* 7 (1).

[3] *Section* 9.

[4] *Parbhudas Rayaji* v. *Motiram Kalyandas*, 1 Bom. 203; *Jamnadas* v. *Lalitaram*, 2 Bom. 294; *Imatiaz Begam* v. *Liakat-un-nissa*, 7 All. 886.

[5] *Imatiaz Begam* v. *Liakat-un-nissa*, 7 All. 886; reversing on review *Imatiaz Begam* v. *Liakat-un-nissa*, 6 All. 630.

[6] *Parbhudas Rayaji* v. *Motiram Kalyandas*, 1 Bom. 203.

[7] *The Secretary of State* v. *Jamnadas*, 6 Bom. 737.

[8] *Kombi* v. *Aundi*, 13 Mad. 75; *Parbhudas Rayaji* v. *Motiram Kalyandas*, 1 Bom. 203; *Ravjinnarayan Mandlik* v. *Dadaji Bapuji Desai*, 1 Bom. 523; *Gurushidgavda Bin Rudragavda* v. *Rudragavdati kom Dyamangavda*, 1 Bom. 531 (533); *Vyankaji* v. *Sarjarao Apaji Rao*, 16 Bom. 537; *Balvant Ramachandra Natu* v. *The Secretary of State*, 29 Bom. 480; *Trimbakrao Anandrao* v. *Balvantro Narayanrao*, 30 Bom. 101; *Nagar Mal* v. *Ali Ahmad*, 10 All. 396.

[9] *Reprinted in the Fort St, George Gazette, Supp* (1871) 32; See also *Andi Achen* v. *Kombi Achen*, 18 Mad. 187; *Babaji Hari* v, *Rajaram Ballal*, 1 Bom, 75; *Parbhudas Rayaji* v. *Motiram Kalyandas*, 1 Bom. 203.

of the law was, that as the bestowal of pensions and similar allowances was an act of grace or State policy on the part of ruling power, the Government reserved to itself the determination of all questions affecting the grant or continuance of these allowances ; and the cognizance of claims relating thereto by the Courts of Judicature was as between the grantor and grantee, absolutely barred." Though the intention of the Government in passing the Act was thus to reserve to itself the determination of all questions affecting a grant emanating from it, the Act has been so framed as to oust the jurisdiction of the Civil Court in regard to other grants and allowances, not originating in an act of grace of state policy [1]. It applies therefore to cases where the grant has been made in consideration of prior rights vested in the grantee [2]. A suit for the recovery of a malikhana in perpetuity granted by the Government to the grantee on his making over his proprietary right in a certain mouzah is a suit for something payable on the part of Government in respect of a right, and is therefore within the prohibition of the Pensions Act [3]. So also is a suit by a person claiming as the hereditary deshmuki of certain mehals on the strength of a sanad granted by the Peishwa, to recover certain dues which were formerly paid over to him by the British Government but subsequently withheld [4]. Similarly a suit to declare the plaintiff's right to a month's share in the Kulkarni, Jyotishi and Deshpande of certain villages [5] ; a suit by a hereditary deshmuki to recover the amount of land revenue levied in the form of grain directly from the villagers [6] ; a claim by a *mirasi* karnam, whose services have been dispensed with, on a percentage of the net revenue of a reserved forest [7], and a suit to establish the plaintiff's right to collect the

To Suits to which it applies.

[1] *Parbhudas Rayaji* v. *Motiram Kalyandas*, 1 Bom. 203.

[2] *Vasudev Sadasiv Modak* v. *The Collector of Ratnagiri*, 2 Bom. 99 : 4 I. A. 119 ; *Maharaval Mohan Singi Jey Singi* v. *The Government of Bombay*, 5 Bom. 408 : 8 I. A. 77 ; *Doe Kuar* v. *Man Kuar*, 17 All. 1 : 21 I. A. 148.

[3] *Deokuar* v. *Man Kuar*, 17 All. 1 : 21 I.A. 148.

[4] *Vasudev Sadhiv Modak* v. *The Collector of Ratnagiri* 2 Bom. 99 ; 4 I. A. 99.

[5] *Babaji Hari* v. *Rajaram Ballal*, 1 Bom. 75.

[6] *Naro Damodar Ghugri* v. *The Collector of Poona*, 6 Bom, 209.

[7] *The Secretary of State* v. *Vydia Pillai*, 17 M. 193.

Government revenue from the villages granted as an endowment to a religious office [1], are within the Pensions Act; but not a suit for a declaration of the plaintiff's eligibility to officiate as patel of a certain village without seeking to obtain anything payable on the part of Government [2]. The Act applies not only to suits brought against Government, but also to suits by one sharer against another for the recovery of the amount paid by Government [3]. In *Nagar Mal* v. *Ali Ahmad* [4], it was held by the Allahabad High Court that, when the claim of a person was admitted by Government a suit by him for enforcing that claim was not within the Pensions Act; this decision is opposed to that of the Madras High Court in *Syed Mahomed Isaack Mushyack* v. *Azeezoon Nissa Begam* [5] and must be taken to have been overruled by the decision of the Privy Council in *Deo Kuar* v. *Man Kuar* [6]. The Act applies only to grants of land revenue and not to grants of land [7], nor does it apply to execution proceedings [8]. Does it apply where a grant of land is made free of revenue? The decisions are not uniform on this matter. In *Peria Kovil Kalavi Appan* v. *Palliah Chetty* [9] it was held that the release of a burden altogether or the lightening of a burden which the land would otherwise bear in the shape of assessment was a gift, or grant, of land revenue to the extent of the relief, and that therefore a suit in respect of such land was barred by section 4 of the Act; and this view was

Its application to suits against Government and others.

Not to grants of lands or to execution proceedings.

[1] *Mahomed Kadir* v. *Gulam Mahomed*, 28 I.C. 934.

[2] *Gurvshidgavda Bin Rudragavda* v. *Rudragavdati Kom Dyamangavda*, 1 Bom. 531.

[3] *Syed Mahomed Isaack Mushyack* v. *Azeezoon Nissa Begam*, 4 Mad. 341; *Andi Achen* v. *Kombi Achen*, 18 Mad. 187; *Babaji Hari* v. *Rajaram Ballal*, 1 Bom. 75; *Deo Kuar* v. *Man Kuar*, 17 All 1: 21 I. A. 148. The contrary view was taken in *Kombi* v. *Aundi*, 13 Mad. 75; but *Muthuswamy Ayyar J.* a party to that decision subsequently changed his view in *Andi Achen* v. *Kombi Achen*, 18 Mad. 187.

[4] 10 All. 396.

[5] 4 Mad. 341.

[6] 17 All. 1: 21 I. A. 148.

[7] *Rama* v. *Subba*, 12 Mad. 98; *Jeeyamba Bai* v. *The Secretary of State* 23 M.L.J. 687; *The Secretary of State* v. *Subbarayudu*, 23 M. L.J. 728; *Nanjudia* v. *Venkata Subbiah*, 27 M. L. J. 618: 1 L. W. 670; *Rav Jinaryan Mandlik* v. *Dadaji Bapuji Desai*, 1 Bom. 523; *Balvant Ramachandra Natu* v. *The Secretary of State* 29 Bom. 480; *Ganpat Rao* v. *Ananda Rao*, 28 All 104, affirmed by the Privy Council in 32 All. 148; *Mannu Lal* v. *Faza Imam*, 33 All. 580.

[8] *Vajiram Bhagvan* v. *Ranchordji Gopalji*, 16 Bom. 731: *Trimback Rao* v. *Balvantro*, 30 Bom. 101.

[9] 1 *In. Ju.* 164.

accepted in *Rama* v. *Subba* [1] and *Jeeyamba Bai* v. *The Secretary of State* [2]. But in *Babaji Hari* v. *Rajaram Ballal* [3], it was pointed out that freedom from liability to land revenue was not identical with a grant of land revenue, any more than the extinction of an easement by becoming sole proprietor of the property, servient as well as dominant, was a grant of an easement and that the land revenue arising from a man's own holding, when it was remitted and the land paid nothing, was rather extinguished than granted, and it was held that to such cases the Act was not applicable [4]. A suit on an agreement that maintenance is to be paid out of an allowance received from the Government is barred under the Act [5], but not a suit on an agreement whereby a widow claimed maintenance in consideration of the relinquishment of her claims in regard to family properties and to a portion of a pension, and the agreement did not specify that it was to be paid out of the pension or was to depend on it [6]. A *Jagir* being in the nature of an unenfranchised inam, a suit for the recovery of a portion thereof is prohibited by the Act [7]. But a suit for the management of certain villages granted revenue free is not prohibited [8]; so also a suit for the management of *saranjam* lands [9]. When the Collector issues a certificate for the recovery of arrears for the years 1889—1890 to 1896—1897, the addition of a claim for the year 1897—1898 in such a suit is not bad [10]. No certificate is necessary to recover the arrears of allowance due to the deceased claimed by his representatives, that accrued due before his death, when the deceased had been declared entitled to the allowance [11]. And arrears of

Suits on agreement.

Jagir.

Arrears.

1 12 Mad. 98.

2 23 M. L. J. 687.

3 1 Bom. 75.

4 *Panchanadayyan* v. *Nilakantayyan*, 7 Mad. 191; *Kumara Tirumalai Naik* v. *Bangara Tirumalai Sauri Naik*, 21 Mad. 310; *Nanjundiah* v. *Venkatasubbiah*, 27 M.L.J. 618: 1 L. W. 670: *Babaji Hari* v. *Rajaram Ballal*, 1 Bom. 75; *Mannu Lal* v. *Fazal Imam*, 33 All. 580.

5 *Damodar* v. *Satyabhama Bai*, 31 Bom. 512.

6 *Raja Venkatanarasimha Ramachandra Rao* v. *Raja Lakshminarasammma Rao*, 30 Mad. 266.

7 *Rama* v. *Subba*, 12 Mad. 98.

8 *Kumara Tirumalai Naik* v. *Bangara Tirumalai Sauri Naik*, 21 Mad. 310.

9 *Keshavrav* v. *Ganaptrao Nilkanth Nagarkar*, 16 Bom. 596.

10 *Krishnaji Sakharam* v. *Anant* 28 Bom. 241.

11 *Chaganlal* v. *Pranjivan*, 34 Bom. 154.

pension due to a lady at the time of her death form part of her estate, and the person who is her legal heir is entitled to them and not the person to whom the pension is granted afterwards [1].

Pensions.

Section 11 of the Act exempts from attachment all pensions granted or continued by Government on political considerations, or on account of past services or present infirmities, or as a compassionate allowance, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any Court. The object for enacting such a provision is stated in the case of *The Secretary of State* v. *Khemchand Jeychand* [2] thus: "In passing the Pensions Act, the Legislature seem to have thought it desirable that exemption from attachment for debt should be confined to pensions properly, so called, and should not be intended to other grants of money or land revenue. And it does not appear to us difficult to understand why the State should have thought it right to secure the pensions of its old servants and of dethroned princes, but should not have cared to protect from attachment grants made to families of freebooters as compensation for the loss of their blackmail." The word "pension" is not defined in the Act and judicial decisions have defined it to mean "a periodical allowance or stipend granted not in respect of a right, privilege, perquisite, or office, but on account of past services, or particular merit, or as compensation to dethroned princes, their families and dependants" [3]. The following grants have been held not to be pensions: a grant of an annual sum by the Government as compensation for loss sustained by the grantee on account of the improper resumption by Government of

[1] *Mussumat Noushabah Sooltan Begum* v. *Mussumat Nubeerah-Sooltan Beegum*, 3 Agra. 44.

[2] 4 Bom. 432. The observations made were with reference to a claim for tora garas haqs which, though in their origin of the nature of black mail, had by long usage acquired a recognised title, *Sumbhoolall Girdhurlal* v. *The Collector of Surat*, in 8 M, I. A. 1; *Futtesangji Jaswantsingji* v. *Kullianraiji Hekoomutraiji*, 10. Bom. H.C.R. 281.

[3] *The Secretary of State* v. *Khemchand Jeychand*, 4 Bom. 432; *Mahomed Cassim Bahadur* v. *Carlir*, 5 Mad. 272; *Subraya Mudali* v. *VelayudhaChetty*, 30 Mad. 153; *Jiban Krishna Ghosh* v. *Sripati Charan Day*, 8 C.W.N. 665, *Lachmi Narain* v. *Mukand Singh*, 26 All. 617; *Anna Bibi* v. *Najmun Nissa*, 31 All. 382.

rent free lands formerly belonging to the grantee, at the time of the permanent settlement [1] ; a bonus granted by Government in addition to pension to an officer compulsorily retired on account of reduction of public service [2]; proprietary right in a village granted subject to the payment of land revenue, as consideration for services rendered to Government by the grantee [3]; a hereditary revenue free jagir granted by the British Government in lieu of a pension [4] ; a grant of a srotriyam village by way of compensation for loss sustained by the grantee on the abolition of the office of Nautwar hereditary in his family [5]. The word "payable" in Section 12 is used in its ordinary primary sense, namely, deliverable in performance of an obligation, in other words, that actual payment was demandable by the person entitled [6]. Therefore a will directing payment of a malikhana due to the testator which was not payable at the time of his death was held to be invalid [7].

Meaning of "payable."

It is not necessary that the certificate of the Collector should be produced at the time of the institution of the suit, and its non-production is not fatal to the suit. It may be produced in the course of the suit and even on appeal [8]. When once a certificate has been issued by the Collector, the Board of Revenue has no jurisdiction to cancel it [9].

Production of certificate.

---

1 *Jiban Krishna Ghosh* v. *Sripati Charan Dey*, 8 C. W. N. 665.

2 *Mahomed Cassim Bahadur* v. *Carlier*, 5 Mad. 272.

3 *Lachmi Narain* v. *Mukund Singh* 26 All. 617.

4 *Anna Bibi* v. *Najmun Nissa*, 31 All. 382.

5 *Singam Setti Sanjivi Kondaya* v. *Draupadi Bayamma*, 31 Mad. 153.

6 *Sridevi* v. *Krishnan*, 21 Mad. 105.

7 *Ibid.*

8 *Mahammad Azmat Ali Khan* v. *Lalli Begum*, 8 Cal. 422 : 9 I A. 8 ; *Jijagi Pratapgi Raja* v. *Balkrishna Mahadeo*, 17 Bom. 169 ; *Miya Vali Ula* v. *Sayed Bava Saheb Santi Miya*, 22 Bom. 496 ; *Ihtisham Ali* v. *Sham Sunder*, 25 All. 73 ; *Ganpat Rao.* v. *Anunda Rao*, 28 All. 104, *affirmed* by the Privy Council in 32 All. 148.

9 *Subba Rao* v. *Rama Rao*, 25 M. L. J. 155 ; *Gothandi* v. *Bhikambhai*, 23 Bom. 676.

CHAPTER VIII.

SERVICE GRANTS.

Origin of service grants.

Service grants came into existence on account of the custom of the country to remunerate services rendered by servants, public or private, by assignments of land or land-revenue, and this system was specially adapted to a country where the revenue was payable in kind. Such assignments varied according to the nature of the services rendered. They were at first only for the lives of the grantee, but in course of time, became hereditary. They may be divided into four classes, (*a*) grants for private or personal service; (*b*) grants for public service; (*c*) grants in favour of village officers; and (*d*) grants for religious services.

(*a*) *Private or personal service grants* are grants by which services, private or personal, were reserved to the grantor [1], as distinguished from the second class in which the community or any portion of it are interested in their maintenance, such as,

Amaram.

Amaram, known also as *Umbilikkai*. According to Mr. Stratton [2], it implies case, and hence the favourable character of the tenure; while Dr. Maclean[3] defines it to mean the command of one thousand horse and an *Amaram* grant "a grant of land by the prince or poligar on condition of service, generally military or police [4]. Such grants were generally held by the armed retainers of zemindars or poligars, and were also held by their relatives, and persons of high rank upon a more honorary tenure of service than the *Kattubadis*. The *Amararkars* were therefore military

[1] Many of the grants that were public or quasi-public before the permanent settlement ceased to be such subsequent to that date.

[2] *Report given in Nellore Dt.* M. 265.

[3] *Man. of Adminis* III. 24, 352.

[4] *Ibid*. 24; *Wilson*, 21.

chiefs, while the *Kattubadis* were inferior peons subject to frequent service. Sometimes villages in a decayed condition were made over under this tenure to peons in the proportion of 8 to 10 to a village, who were then considered the *mirasidars* of those villages and were jointly bound to make good the demand or rent orginally stipulated, which was neverafter raised [1]. Wilson [2] and Maclean[3] think that such grants are resumable when the *amorarkar* or grantee fails to perform the stipulated service; but judicial decisions have gone further and held that they are resumable at the will of the grantor [4].

Bissoyee lands are lands held by the *Bissoyees*, chiefs in the maliahs in the Ganjam District [5]. The form of administration prevalent in the Maliahs and the tenure of the Bissoyees are described by the Privy Council in *Goura Chandra Gajapati Narayana Deo* v. *The Secretary of State* [6], "The Maliahs appear to have been always organised on a special system, not unlike that which has been found to prevail in other hill countries of India. The inhabitants of the country are those known as *Savaras* an indigenous hill race, once no doubt turbulent people and dangerous neighbours to those dwelling in the plains. The Maliahs are divided into eleven muttas, each of which is controlled by a local chief or Bissoyee. Each Bissoyee had his fort (a term, sometimes at least used as synonymous with the mutta) and his staff of officers and paiks. The Bissoyees were formerly responsible for controlling the Savaras within their jurisdiction, maintaining peace and good order, and defending the passes to the plains. In return for their duties they received certain advantages. It is not suggested by either side that a Bissoyee had ever had any proprietary right in the mutta under his control, or any part of it. On the contrary, it is agreed that whatever he has held has been held on a mere service

Bissoyee lands.

[1] *Report of Mr. Stratton* given in *Nellore Dt.* M. 265.
[2] *Glossary*, 21.
[3] *Man of Adminis*, III. 352.
[4] *Unide Rajaha Raja Bommarauze Bahadur* v. *Permmasamy Venkatadry Naidu*, 7 M. I. A. 128; *Narasayya* v. *Venkatagiri Raja*, 23 Mad. 262; *Rajah of Venkatagiri* v. *Mukku Narasyya*, 37 Mad. 1.
[5] *Man. of Adminis.* III. 385.
[6] 28 Mad. 130 (144): 32 I. A. 53.

tenure, not by right of ownership. In respect of what he has enjoyed he has paid a sum by way of kattubadi or quit-rent." The relation of the Bissoyee with the Savaras is given in the judgment of the Agent to the Governor, which is quoted with approval by the Privy Council in the above case [1], "Each 'fort' has its own boundaries, including forest lands and is made up of a number of villages, each of which again has its own boundary. The remuneration of the Bissoyees is derived partly from land cultivated by themselves, to which the Savaras contribute a certain amount of 'Vetti' or 'customary labour,' while the Paiks are remunerated either by grants of land or by payment in cash and grain. The Savaras have permanent wet and permanent dry cultivation; they also practice 'Kumri' or Podu cultivation. For the permanent cultivation they pay a fixed proportion of the produce to the Bissoyees, but in regard to the 'Kumri' cultivation they receive a fixed fee, either one rupee per house or one putti of grain per house, from each Savara family, besides 'Sambolos' or 'dallies' of fruit and vegetables six times in the year. A Savara residing in one village cannot practise 'Kumri' cultivation in another village, and permission must be obtained from the head of the village and the Bissoyee. The kattubadi is paid by the Bissoyee to the plaintiff, but with the exception of this payment, the Bissoyee exercises absolute authority over the affairs of his Fort, subject to Government control."

Doratnam.

Doratnams are lands granted to the Doras who hold villages for the security of the country and for preventing the incursions of Savaras and other hill tribes [2].

Jivitham.

Jivithams found in the Ramnad and Madura Districts are of the same nature as the Mukhasas of the Northern Circars. They were granted by zemindars to their relations and dependants, sometimes on personal service and sometimes on tenure of service [3].

Kattubadi.

Kattubadi means settlement and is used to denote lands granted by zemindars to their armed servants and

[1] *Goura Chandra Gajapati Narayana Deo* v. *The Secretary of State*, 28 Mad. 130 (145): 32 I. A. 53.

[2] *Man of Adminis*, III. 354.

[3] *Ibid.*

personal servants on tenure of service at a fixed, unvariable and favourable rent [1]. They were of two classes, *Grama-Kattubadis*, who were strictly village servants and were required to perform service throughout the year, and *Jangi Kuttubadis*, who were called out for service only on emergent occasions [2]. *Kattubadi* grants are resumable at the will of the grantor [3]. They are of various classes, known as, (1) *Anakala*, held by Kattubadi peons whose duty it was to carry provisions to village and taluq officials ; (2) *Angazala*, held for performing the service of Angazala Kattubadi peons whose duties consisted in distributing water to the fields, and in collecting ryots for the performance of customary labour ; (3) *Dandiya*, held by the head of Kattubadi peons ; (4) *Jitavritti* : *Jitotra*, held by a class of Kattubadis known by this name who formerly used to draw pay without rendering any service ; service was demanded of them from fasli 1255 ; (5) *Kandacharam*, held by Kattubadi peons employed in the Western taluq of Bellary, who were remunerated by fixed remission from the assessment of the lands held by them ; (6) *Kola Payako*, held for the maintenance of armed retainers in zemindaries in the District of Ganjam ; (7) *Mutratsa*, granted to a man of the Mutratsa caste for service as Kattubadi peon ; (8) *Paik*, held by military peons in the District of Ganjam on condition of service ; and (9) *Tirastu*, held by a description of armed peons maintained by the hill zemindars of the Vizagapatam District for preserving the peace of the country.

Mukhasa.

Mukhasa is defined by Wilson [4] thus, "A village or land assigned to an individual either rent free or at a low rent, on condition of service ; or a village held *khas* by the state, the revenue being paid to the Government direct ; or a share of the Government in a village, or in the revenue paid by it." It has the same meaning as a jagir. In *Sri Rajah Sobhanadri Appa Rao Bahadur* v. *Sri Raja Venkatanarasimbha Appa Rao Bahadur* [5], the learned

[1] *Man of Adminis*, 256, 353.
[2] *Ibid*, III. 256.
[3] *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmaswamy Venkatadry Naidu*, 7 M. I. A. 128.
[4] *Glossary*, 352.
[5] 26 Mad. 403, affirmed by the Privy Council *in Venkata Narasimha Appa Rao Bahadur* v. *Sobhanadri Appa Rao Bahadur*, 29 Mad. 52 : 33 I. A. 46.

judges of the Madras High Court observed that *mukhasa* was a well known term in the Northern Circars and that the term itself implied that it was a tenure subject to service. It took this form when it was granted to servants and military chiefs in lieu of pay; sometimes it was granted to men of high position and influence, whose tenure is of a honorary or almost nominal nature. In some cases, when it was granted to relations of zemindars, no service is specified in the grant, though it is expressed to be for service [1]. In these latter cases they partake of the nature of personal grants. *Mukhasa* can be classified according to the conditions of the grant into (1) *Kattubadi Mukhasa*, village or villages granted for service at a low quite-rent; (2) *Rayayet Mukhasa*, villages held on a favourable assessment fluctuating with the cultivation of each year; and (3) *Sarva Mukhasa*, village granted with no condition of service.

Meaning in Tanjore.

In Tanjore the term *Mukhasa* is used to denote the private estate of the late Raja, being made up of lands which His Highness Sarabhoji retained at the cession of the province. It is wholly exempt from the payment of revenue, save the small police fee, the water tax levied for dry cultivation converted into wet with the aid of Government water and the Local cess [2]. In the Chingleput District it denoted villages alienated by poligars and paying nothing to Government [3].

Besides these grants there are others known by a variety of names, such as,

Attar, for supplying perfumes to the poligar.

Barut-gola, for supplying the poligar with gunpowder and ball.

Bhatraz: *Sangitham*, held by bards for singing the praises of the zemindar or poligar.

Boi: *Gadaba*: *Gadabalu*: *Shendi*, for the service of palanquin bearer.

Darzi: *Taiyalkaran*, for the service of tailor to the zemindar or poligar.

[1] *Cf. Vizianagaram Maharajah* v. *Sitaramarazu*, 19 Mad. 100.

[2] *Tanjore* Dt. M. 680.

[3] *Mirasi Papers*, 18.

Dega, held by falconers in the service of zemindars or poligars.

Dommera, granted to persons of the Dommera or Nokkan caste, who gain their livelihood by performing as tumblers and rope dancers.

Erukala, granted to persons of the Erukala tribe for collecting medicinal drugs or plants for the use of the zemindar.

Gauda Manda : *Golla* : *Palkalaya Kundu*, held by a shepherd for the service of supplying milk to the zemindar and for manuring the fields of a village with his sheep.

Godugu, for holding an umbrella over the zemindar.

Gurrapu, for superintending and breaking in the horses of the zemindar; for the maintenance of a horse given as a present.

Jatthi, held by wrestlers in the service of poligars or zemindars.

Kadaiyan, for the service of supplying fish and cadjan leaves to the zemindar.

Kaviroyan : *Pulavan*, held by poets at the court of poligars and zemindars; known as *Kavitaipattan*, when held by a Brahman.

Khasa, for domestic service in the household of the zemindar.

Kommu, for the service of blowing a horn before the Tahsildar.

Kon, for the service of supplying milk, ghee, etc. to the zemindar or his servants when they halt in the village.

Kudukuduppai, held by fortune tellers who beat a kind of clapper called Kudukuduppai.

Matapati, for the service of supplying milk to public officers and cooking food to the Reddis when they leave the village on public duty. Wilson defines it thus [1], " A member of the village community holding land in inam rent free on condition of his supplying public officers and servants with butter milk, being also paid for the same; it is said to apply to village servants who acted not only as purveyors to public officers but sometimes as cooks for the villagers."

1. *Glossary*, 334.

Nakara, for the service of beating a drum at mosques, or at the gates of Nawabs or men of rank.

Palapatti, for performing the service of pouring milk at particular places on the boundary line of a village on the last day of the procession of the village deity.

Peria Arañmanai, for watching the zemindar's palace.

Perukuli, (1) for the benefit of persons who gave to their children the name of the reigning zemindar in Shivaganga; (2) granted for giving names to the children of the zemindar.

Puppotti, for the service of supplying flowers to zemindars.

Sei Kalgar, for the service of polishing the arms of zemindars.

Semman, for supplying the zemindar with chunam.

Siyahi Wala, granted for the service of supplying ink to public officers.

Tabela, for superintending the stables of the zemindar.

Tamalapukula, for supplying betel leaves to zemindars.

Ustad, for teaching the zemindar fencing and gymnastics.

Valayan, for catching fish to the zemindar.

Zingar, for the service of saddler in the service of the zemindar.

Kasavargam.

Kasavargam tenants are defined by Wilson thus [1], "Traders and makers of canvas, sacks, residing in a village and claiming certain fees and perquisites, having a proprietary right to their houses but not to the ground on which they stand." They are tenants at will, but have a proprietary right to the house on the land, and therefore, when they are evicted, they are entitled to compensation for their buildings [2]. The chief incidents of the *Kasavargam* tenure as prevalent in the District of Tanjore were elaborately dealt with by the District Judge of Tanjore

[1] *Glossary*, 583.

[2] *Appa Pillai* v. *Gopalasami Reddi* (1860) M. S. D. 41; *Blake* v. *Savundarathammal*, 22 Mad. 116.

in *Nadarsa Rowthen* v. *Amirtham* [1], which was affirmed by the High Court. They are (1) "the manaikat or site is the property of the mirasidars: the Kasavargamdar has no proprietary right in it; but he is ordinarily the proprietor of the superstructure built upon it; (2) the Kasavargamdar holds the manaikat free of rent or for a more or less nominal rent, on condition that he performs services for the mirasidars as an artisan or otherwise, as the case may be; (3) the Kasavargamdar has no right to transfer the manaikat to another, but on his death it passes to his heirs on the same conditions as those on which he held it; (4) the mirasidar is entitled to eject the kasavargamdar forthwith, if the latter refuses to render him the customary services; (5) if the Kasavargamdar was ejected, the mirasidar was bound to compensate him for any house which he may have erected on the land during his tenancy." Sometimes the Kasavargamdar has to do service for the whole village in which the land is situated and is liable to be evicted, if he refuses to perform service[2].

Grants for public service.

Grants for public service, or purposes of public utility are those in which the community or a portion of it are interested. Even if they have been granted by the zemindar, he has no right to resume them, unless he has been given that right by the Government, in whom alone the right of resumption is vested. The circumstances under which such grants are resumed are that the grantee refuses or fails to perform the services imposed upon him, or the necessity for maintaining them has ceased. The most important of this class of grants are what are called *Dasabandham inams*, known also as *Kattu-Kodige*. The word *Dasabandham* means ten in hundred, implying thereby a deduction of one-tenth of the revenue [3]. It is a grant of land or land revenue given as compensation for the construction of a tank, well or channel; the grant, generally if not always, carries with it the condition of keeping the work in repair [4]. If the grant consists of land, it is called *Khandam Dasabandham*; and if it consists of an assignment of

Dasabandham inam.

[1] 22 M. L. J. 1.

[2] *Saminatha Iyer* v. *Marimuthu*, 14 I. C. 689.

[3] *Man of Adminis*, III. 260, 353.

[4] S. O. 56 (1), *note*.

revenue, it is called *Shamilat Dasabandham* [1]. The extent and value of the land and the amount of revenue granted varied in proportion to the capital expended on the work in question. In the Cuddapah District [2], it was granted for three purposes, (1) keeping in repair tanks which cultivate Government land, (2) levelling lands and rendering them fit for cultivation, and (3) bringing dry waste into cultivation. In the North Arcot District two varieties of *Dasabandham* inams are found, (1) *Chautayi*, in which the dasabandhamdar received one-fourth of the assessment paid on the ayacut, and (2) *Valavadi*, in which he was granted the whole ayacut at a favourable rate of assessment[3]. It is liable to resumption, if the inamdars, after due notice, fail to carry out the necessary repairs to the work for the upkeep of which it was granted, and they are allowed to participate in the enhanced revenue derived from the works they maintain [4]. *Shamilat Dasabandhamdars* are allowed a share in the profit of dry land irrigated in excess of the registered area, proportionate to the *Shamilat* inams they enjoy, and the *Khandam Dasabandhamdars* 25 per cent of the water rate leviable on the extension of cultivation [5]. The Government has given up its reversionary right to resume these inams situated within permanently settled estates, even though they were in existence at the time of the permanent settlement, and has declared that the proprietors are entitled to resume them on failure of the inamdar to do his duty [6].

Other public service grants.

Other kinds of grants for public purposes found in the Presidency are the following :—

Alotti, for the service of collecting ryots for the performance of customary labour.

Ambikar : *Pallevadi* : *Teppam*, for ferryman's service.

Anaikkaran, for the service of preserving anicuts or dams in good order and for keeping of cattle, etc., from destroying the reeds growing thereon.

Bandela, held by inferior servants for protecting cattle from straying into the fields and destroying the crops.

1 S. O. 56 (1), *note*.
2 *Manual*, 235.
3 *Dt. M.* 172.
4 S. O. 56 (1).
5 *Ibid.*
6 *Ibid*, 56 (2).

Karai manyam : *Kulam Vettu* : *Kammayi Vettu*, for the service of collecting work people to repair tanks.

Khulga : *Patula*, granted to tank diggers for the service of executing petty repairs to tanks and channels.

Kulam Kaval, for guarding tanks and seeing that the ryots do not waste the water.

Nanal, for the service of planting reeds for the protection of anicuts and irrigation channels.

Nirmunaka, for the service of diving into the water and opening and shutting the sluice of a tank.

Patti, for the service of preventing cattle from trespassing and destroying the crops.

Sagubadi, granted to head ryots with a view to their encouraging the cultivation of government lands.

Uppara : *Waddi*, for the service of repairing tanks.

Urani, for maintaining in repair the village tanks, for supplying drinking water.

Vayikkal, for the service of preserving channels and other irrigation works in repair.

(*c*). *Grants in favour of village officers.*

Village service grants.

It has already been pointed out in a previous Chapter that an Indian village was a corporation, with a complement of officers necessary for an agricultural population who were paid by assignments of land or land revenue, or a proportion of the produce, called marahs, russooms, or swatantrams [1]. As the names of the offices have already been given, it is unnecessary to repeat them here.

Karnams in proprietary estates.

Section 11 of Regulation XXV of 1802 required the land-holders with whom permanent settlement was effected to keep up the regular and established number of karnams in the several villages in their estates. The karnams are bound to obey all orders issued by the land-holders who are, however, prohibited from removing them without an order of Court, and it is enacted that, whenever they have any cause of complaint against them, they are at liberty to institute suits in the Civil Courts for bringing them to trial. Whenever any karnam is dismissed by a sentence of a Court

[1] *Chap* III. 40.

of Judicature, the land-holder is given power to appoint a successor from the family of the last incumbent, and in case there is no member of his family capable of performing the duties thereof, to appoint another at his discretion.

Regulation XXIX of 1802.

Regulation XXIX of 1802 was passed the same day that Regulation XXV of 1802 was passed for the purpose of regulating the duties and appointment of karnams in permanently settled estates. Under this Regulation, the proprietor is given the power of nominating karnams [1], and of appointing a successor when a vacancy occurs in the office, either by death or dismissal [2]; and in filling vacancies he is to appoint heirs of the preceding karnam, and in case the incapacity of the heir is proved to the satisfaction of the Judge of the zilla, to nominate any person according to his discretion [3]. The proprietors are required to deposit a list of names of the karnams within their estates and the names of villages of which they are karnams in the Court of the Adalat of the zilla, head kacheri of the Collector and in the principal kacheri of the zemindari or estate [4], and are prohibited from dismissing any karnam without a sentence of a Court of Judicature [5]. The duties of the karnam and the penalties for their non-performance are laid down in the other Sections of the Regulation. Under the Regulation, the proprietor alone can exercise the power of appointing or dismissing a karnam. Therefore the agent of an undivided brother of the proprietor [6], and the lessee of a permanently settled estate under a lease from the proprietor authorising the former to appoint and remove karnams [7], were held incompetent to exercise the power of removing a karnam. A Srotriyamdar is not entitled to sue for removal of a karnam; and his only course is to apply to the Collector for his removal [8]. A lessee of a permanently settled estate with power under the lease to appoint and remove karnams is entitled to bring a suit for damages

1 *Section* 3.
2 *Section* 6.
3 *Section* 7.
4 *Section* 8.
5 *Section* 5.
6 *Subramanya* v. *Somasundara*, 15 Mad. 127.
7 *Kumarasami Pillai* v. *Orr*, 20 Mad. 145.
8 *Thurga Ramachandra Rau* v. *Appayya*, 7 Mad. 128.

against karnams for neglect of their statutory duties [1]. The "heirs of the preceding karnam" mean his next of kin according to the order of the several grades of legal heirs and not heirs in the order of succession to undivided ancestral property [2]. Therefore a daughter's son is preferable to an undivided brother of the last incumbent [3]. A female is, by reason of her sex, incapacitated from holding the office of karnam [4]. Therefore when the next heir is a female, the proprietor is bound to appoint the next heir after her, and if the proprietor does not consent to the appointment, the Court can appoint him [5]. Minority is a ground on which the next heir can be passed over [6]. When the next heir is incapacitated, the proprietor can appoint any person he likes [7]. But where there are heirs of a deceased person who are qualified and willing to hold the office, the zemindar cannot appoint a third person [8]. But, when in consequence of the incapacity of the next heir the proprietor has appointed a third person, such heir cannot afterwards sue for the recovery of the office [9]. Though the incapacity of the next heir has to be proved to the Court before a third person is appointed, such proof is not necessary, if the incapacity is admitted [7]. The provisions of Section 7 apply to cases where vacancy is caused by dismissal [10]. Though an officer of Government is synonymous with a public servant, every public officer is not an officer of Government. Therefore a suit for damages against a karnam for default in keeping certain accounts can be brought on the small cause side [11]. A karnam in a permanently settled estate is a village servant employed in revenue duties within the

[1] *Kumarasami Pillai* v. *Orr*, 20 Mad. 145.

[2] *Krishnamma* v. *Papa*, 4 M.H.C. R. 234; *Venkayya* v, *Subbarayadu* 9 Mad. 283; *Seetaramayya* v. *Venkataraju*, 18 Mad. 420.

[3] *Krishnamma* v. *Papa*, 4 M.H.C. R. 234.

[4] *Venkataratnamma* v. *Ramanuja Sami*, 2 Mad. 312; *Venkata* v. *Rama*, 8 Mad. 249; *Chandramma* v. *Venkataraju*, 10 Mad. 226.

[5] *Chandramma* v. *Venkataraju*, 10 Mad. 226.

[6] *Venkata* v. *Rama*, 8 Mad. 249; *Venkatanarayana* v. *Subbarayudu*, 9 Mad. 214.

[7] *Venkatanarayana* v, *Subbarayudu*, 9 Mad. 214.

[8] *Venkayya* v. *Subbarayadu*, 9 Mad. 283.

[9] *Venkatanarayana* v, *Subbarayudu*, 9 Mad, 214; *Subbarayudu* v. *Gangarazu*, 11 Mad. 196.

[10] *Arumugam Pillai* v. *Vijayammal*, 4 Mad. 338.

[11] *Orr* v. *Neelamegam Pillai*, 18 Mad. 395.

meaning of Section 52 of the Revenue Recovery Act, and consequently the attachment and sale to enforce payment of *mera* due to him is valid [1]. In *Venkatanarasimha* v. *Suryanarayana* [2], it was held that a suit for the dismissal of a karnam could be brought only before a Subordinate or District Court. But suits to establish the plaintiff's right to the office of karnam, suits to have the appointment of another as karnam cancelled and to have the plaintiffs appointed were brought in the District Munsif's Court [3]; and in *Venkatanarayana* v. *Subbaroyadu* [4], a suit to establish the plaintiff's right and to recover the emoluments of an office was brought before the District Court.

The proprietary estates village service Act.

The *Madras Proprietary Estates' Village Service Act (II of 1894)* was passed for the purpose of regulating the appointment, dismissal, punishment and remuneration of the following classes of village officers by whatever name they were called, namely, (1) village-accountants, (2) heads of villages, (3) village-watchmen or police-officers, in estates as defined in Section 4 of the Act[5]. Power is given to the Government to extend the Act or any portion thereof to all or any of the above classes of village offices [6], and on the extension of its provisions to the office of village accountant in any estate, Section 11 of Regulation XXV of 1802, and Regulation XXIX of 1802 cease to be in force therein [7]. The Act requires the maintenance in each estate of so many and such village officers as the District Collector, subject to the orders of the Board of Revenue, may direct [8], and every proprietor is required to prepare and submit a register containing particulars of all village officers and village servants employed in his estate and of their emoluments and duties, whenever called upon by the District Collector to do so, within

[1] *Collector of North Arcot* v. *Nagi Reddi*, 15 Mad. 35.
[2] 12 Mad. 188.
[3] *Krishnamma* v. *Papa*, 4 M. H. C. R. 234; *Arumugam Pillai* v. *Vijayammal*, 4 Mad. 338; *Chandrammal* v. *Venkatraju*, 10 Mad. 226; *Subbarayudu* v. *Gangarazu*, 11 Mad. 196; *Jaggantha Pillai* v. *Subbaroya Pillai*, 22 Mad. 340.
[4] 9 Mad. 214.
[5] *Section* 2.
[6] *Ibid.*
[7] *Section* 3.
[8] *Section* 7.

three months from the date of such requisition [1]. Every vacancy in a village office caused by the death or resignation of its holder is to be reported by the proprietor to the Revenue officer in charge of the division in which the estate is situated [2], and the proprietor is given power to fill such vacancies, and to appoint persons to a newly created office, within six weeks from the date of such vacancy or creation, and is to send notice of the appointment made by him to the Revenue Divisional Officer [3]. In making appointments, the proprietor is to be guided by the following rules[4], namely, (1) No person is to be appointed who (*a*) is not of the male sex, (*b*) has not attained the age of majority, (*c*) is not physically and mentally capable of discharging the duties of the office, (*d*) has not qualified according to the educational test prescribed for the office in question by the Board of Revenue, (*e*) has been convicted by a Criminal Court of any offence, which, in the opinion of the Revenue Divisional officer or of the District Collector, disqualifies him from holding the office; and (2) The succession to hereditary offices is to devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible zemindaries in Southern India. The Revenue Divisional Officer to whom notice of appointment is given may disallow the appointment made by the proprietor within three months of the date of its receipt by him, if he thinks that the person appointed is disqualified and ask the proprietor to appoint another person and the proprietor is to appoint another within six weeks after such requisition [5]. In cases where no notice of appointment is sent to the Divisional Officer within the time fixed, or where the fresh appointment made by him is again disallowed by the Divisional Officer, the latter himself can appoint one in accordance with the rules prescribed in section 10 [6]. Against every order passed by the Revenue Divisional Officer or the District Collector, an appeal is provided respectively to the District Collector or the Board of Revenue [7].

[1] *Section* 5.
[2] *Section* 8.
[3] *Section* 9.
[4] *Section* 10.
[5] *Section* 11 (1).
[6] *Section* 11 (2).
[7] *Section* 11 (3).

Procedure when the next heir is aminor or is disqualified.

Where the next heir to a hereditary office is not qualified, the proprietor is to appoint the person next in order of succession who is so qualified, and in the absence of any such person in the line of succession, may appoint any person duly qualified [1]. Where the next heir is a minor, the proprietor is to send his name for registration to the Revenue Divisional Officer as the heir of the last holder, and appoint at the same time another duly qualified person to discharge the duties, until the minor on attaining majority, or three years thereafter, is qualified under the Act; and if he dies or remains disqualified for three years after attaining majority, the vacancy is to be filled as if he were dead [2]. The effect of registration is merely to declare that the person registered is entitled on attaining majority or within three years thereafter to be appointed to the office, provided he is qualified; and it does not give the registered person any right to sue for the inam lands attached to the office enfranchised in favour of another [3].

When the holder is dismissed or suspended.

Where a hereditary village officer is dismissed or suspended, the authority dismissing or suspending may direct that, until the death or return to duty of such holder, his duties are to be performed by some person duly qualified under the Act, who is not an undivided member of the family of the dismissed or suspended officer, to be appointed by the proprietor, subject to the approval of the Revenue Divisional Officer; and where, in such cases, the authority concerned does not give directions for the appointment of another, the proprietor may fill it as if he were dead under the provision of the Act ; and if the person suspended, removed or dismissed is permitted to return to duty, the person so appointed in the interim ceases to hold office [4]. The provisions of Section 11 apply also to appointments made under Sections 12 and 13.

Where villages are grouped.

Where two or more villages are grouped together to form a single village or any village is divided into

[1] *Section* 10 (3).
[2] *Section* 13.
[3] *Satyanarayana Appalarazu* v. *Narasamma*, 31 Mad. 526.
[4] *Section* 14 (1).

two or more villages, all the village offices of the villages or village so grouped, amalgamated or divided cease to exist, and new hereditary offices, if the offices they replace are hereditary, are to be created, and the holders thereof selected by the proprietor from among the families of the last holders of the offices which have been abolished [1]. Where two or more village offices of one class exist, and the District Collector asks the proprietor to dispense with the services of officers not required, the proprietor is to retain those whom he thinks best qualified to discharge the duties of the remaining offices [2].

Amalgamated or divided.

A proprietor empowered by the Board of Revenue in this behalf may, after enquiry, fine any village officer to the extent of three rupees for misconduct or neglect of duty [3]. Power is given to the District Collector and the Divisional Officer, of his own motion, or on complaint and after inquiry, to fine, suspend, dismiss, or remove any village officer for misconduct, or neglect of duty, or for non-residence in the village [4], and an appeal is provided for against every such order [5].

Powers of fine, suspension.

The provisions of the *Hereditary Village Offices Act* (III of 1895) apply to other hereditary village offices in proprietary estates, except (1) the offices of (*a*) the village-carpenter, (*b*) the village blacksmith, (*c*) the village-barber, (*d*) the village-washerman, (*e*) the village-potter, (*f*) the village-astrologer, (*g*) the village-purohit or priest, and (2) in proprietary estates wherein Madras Regulation XXIX of 1802 remains in force, the office of village accountant [6]. The proprietor is given power to suspend, dismiss or remove any holder of the above offices except the village accountant, the head of the village, and the village watchman for misconduct, or for neglect of duty, or incapacity, or for non-residence in the village, or for any other sufficient cause [7]. The Collector is also given similar power with regard to these officers in propriety estates [8], but is not to exercise it unless, for reasons to be recorded in writing, he is satisfied that the

Hereditary village offices Act.

[1] *Section* 15 (1)
[2] *Section* 15 (2).
[3] *Section* 16 (1).
[4] *Section* 16 (2).
[5] *Section* 16 (3).
[6] *Section* 3 (3).
[7] *Section* 8.
[8] *Section* 9.

proprietor concerned has neglected to exercise in an adequate manner the powers conferred on him. In filling vacancies, the proprietor is to be guided by the following rules, namely, (1) No person is to be appointed who (*a*) is not of the male sex, (*b*) has not attained the age of majority, and (*c*) is not physically and mentally capable of discharging the duties of the office[1], and (2) The succession to such offices is devolve in accordance with the law or custom applicable to them at the time when the Act came into force[2]. When the next heir is not qualified as above, the proprietor is to appoint the person next in succession who is so qualified, and in the absence of any such person in the line of succession, may appoint any person who is duly qualified [3]. When the next heir is a minor, the proprietor is to register him as heir and to have the duties performed by some other person duly qualified, until the person registered as heir becomes qualified[4]. If, however, he dies during minority, or is disqualified on attaining majority, the proprietor is to appoint another person according to the provisions of the Act[5].

Village offices in ryotwari districts.

The appointment, suspension, removal or dismissal of hereditary village officers in ryotwari districts are now governed by the *Madras Hereditary Village Offices Act* (III of 1895). Prior to the Act there was no statutory law governing their appointment etc. Section 7 of Regulation II of 1806 (repealed by Act XII of 1876) declared that Sections 1 to 10, 13 to 16 of Regulation XXIX of 1802 did not apply to those districts not permanently settled, and enacted in addition to Sections 11, 12, 17, 18, and 19 of that Regulation, certain rules for the due discharge of duties of karnams in districts not permanently settled. The new rules made by Regulation II of 1806 placed them under the immediate authority of the Collectors, who were empowered without restriction to nominate persons to the office for the approval of the Board of Revenue, and declared a karnam so appointed liable to removal from office for incapacity, disobedience or neglect of the Collector's orders,

1 *Section* 11 (1).
2 *Section* 11 (2).
3 *Section* 11 (3).
4 *Section* 11 (4).
5 *Ibid.*

or for falsifying or mutilating accounts, or if, having abandoned the duties of his office for other pursuits, he failed to return or reassume them within one month. It is unnecessary to consider here whether the Regulation recognised the hereditary right of karnams or not [1], for the Board of Revenue in their proceedings dated 25th September 1849 recognised the hereditary right, so far as it was consistent with a capacity to discharge the duties attached to the office. The provisions of Act III of 1895 are applicable to the following classes of village offices, provided that emoluments have been attached thereto [2] :—(1) hereditary village offices in local areas to which the Madras Village Cess Act 1893, has been, or may be extended; (2) hereditary village offices to which the Madras Proprietary Estates' Village Service Act, 1894, is extended; (3) other hereditary village offices in proprietary estates except (i) the offices forming class (4) below and (ii) in proprietary estates wherein Madras Regulation XXIX of 1802 remains in force, the office of village accountant; (4) the hereditary offices of village artizans and village servants such as the following, namely :—

(1) Village carpenter.
(2) The village blacksmith.
(3) The village barber.
(4) The village washerman.
(5) The village potter.
(6) The village astrologer.
(7) The village purohit or priest.

When villages are grouped, amalgamated, or divided.

The Board of Revenue is given power, in cases coming under clause (1) of Section 3, to group and amalgamate two or more villages into a single village, or divide a village into two or more villages, and thereupon the old offices cease to exist, and new offices which are hereditary are to be created; and the Collector is to appoint persons to such offices whom he finds best qualified from among the families of the last holders of the offices which have been abolished [3]. When two or more village offices exist in the same village, the

[1] See on this point the judgments of *Turner C.J.*, *Muthuswamy Ayyar J.* and *Hutchins, J.* in *Venkata* v. *Rama*, 8 Mad. 249.

[2] *Section* 3.

[3] *Section* 6 (1).

Board of Revenue may, subject to the approval of Government, direct that the number of such village offices is to be reduced, and the Collector thereupon is to dispense with the services of the officers no longer required, and to retain those whom he considers best qualified to discharge the duties of the remaining offices [1]. Power is given to the Collector to fine, suspend, dismiss, or remove the holder of any office mentioned in clause (1) of Section 3 for misconduct, or for neglect of duty, or incapacity, or for non-residence in the village, or for any other sufficient cause [2]. Power is also given to a Tahsildar or Deputy Tahsildar to fine such village officer in such amount as may be prescribed by the Board of Revenue [3]. The rules by which the Collector is to be guided in making appointment to vacancies caused in village offices are the same as those applicable to proprietors under the Proprietary Estates Village Service Act [4]. The succession to village offices forming class (4) of Section 3 is to devolve in accordance with the law or custom applicable thereto at the date on which the Act came into force.

Religious service grants.

(d). *Grants for religious services* are grants of land or land revenue made for the performance of the various services in a temple. Lands of this description are known as *Sibbandi poruppu lands* in the Madura District [5] and as *Karaima* in Malabar. They are usually hereditary, and according to the recent decisions of the Madras High Court, hereditary offices are to be looked on with disfavour, and must be clearly made out [6]. In *Sundarammal* v. *Yogavana Gurukkal* [7], it was held that a woman could not hold the office of *archaka* and its emoluments, but as its duties are usually performed by deputies, it was held in *Tangirala Siranjivi* v. *Raja Manikya Rao* [8], that it could not be assumed that a minor, a female, or a person unlearned in the Vedas lost their right to services in

[1] *Section* 6 (2).
[2] *Section* 7 (1).
[3] *Section* 7 (2).
[4] *Section* 10.
[5] *Madura Dt.* M. Part V. Ch. VI. 139.
[6] *PhatmaBi* v. *Haji Abdulla*, 26 M.L.J. 115; *Sundarammal* v. *Yogavana Gurukkal*, 38 Mad. 850; *Sripaka Chinna Mahadeva Vazulu* v. *Muthara Suryapprakasam*, 26 M.L.J. 482; *Ananthanarayana Iyer* v. *Athimuthu Iyer*, (1914) M.W.N. 385.
[7] 38 Mad. 850.
[8] 27 M.L.J. 179.

the temple, and that it was for the dharmakartas to show that they were disqualified and in *Ramasundaram Pillai* v. *Savundarathammal* [1], it was held that a custom allowing woman to hold such offices was not illegal.

Alienation of religious offices.

Alienations of religious offices are opposed to public policy and are invalid [2], and a custom sanctioning them is valid [3], but not a custom whereby the holders get pecuniary benefit to themselves [4]. The principle of non-alienability of religious offices and their endowments applies, when they are sought to be sold in execution of a decree [5]. The Madras High Court has held that an alienation of a religious office in favour of a person standing in the line of heirs is invalid [6]; the contrary view has been taken by the Bombay High Court [7]. When the holder of a religious office makes an alienation, it is not binding upon his successor [8], even though he happens to be his son [9]. When an inam has been granted and confirmed by Government for the performance of religious services in the temple, the right of resuming it for non-performance of the duties vests in the government and not in the temple trustees[10].

[1] (1914) M.W N. 919: 1 L.W. 900.

[2] *Kotel Kanni* v. *Achuda Pistharodi* 3 M. H. C. R. 380; *Raja of Cherukal Kovilagam* v. *Mootha Raja*, 7 M.H. C.R. 210; affirmed on appeal in *Raja Varmah Valia* v. *Raja Varmah Kunhi Kutty*, 1 Mad. 235: 4 I.A. 76; *Narasimha Tatha Chariar* v. *Anantha Bhatta*, 4 Mad. 391; *Kuppa* v. *Dorasami*, 6 Mad. 76; *Narayana* v. *Ranga*, 15 Mad. 183; *Lakhmanasami Naidu* v. *Rangamma*, 26 Mad. 31; *Sundrammal* v. *Yogavana Gurukkal*, 38 Mad. 850.

[3] *Raja Varmah Valia* v. *Raja Varmah Kunhi Kutti*, 1 Mad. 235: 4 I.A. 76.

[4] *Ibid*; *Sundrammal* v. *Yogavana Gurukkal*, 38 Mad. 850.

[5] *Lakshmanasami Naidu* v. *Rangamma*, 26 Mad. 31: *Sundrammal* v. *Yogavana Gurukkal*, 38 Mad. 850; *Juggarnath Roy Chowdhry Kishen* v. *Pershad Surmah*, 7 W.R. 266; *Bubo Misser* v. *Srinivasa Misser*, 5 Ben. L. R. 517.

[6] *Kuppa* v. *Dorasami*, 6 Mad. 76; *Narayana* v. *Ranga*, 15 Mad. 183; *Alagappa Mudaliar* v. *Sivarama Sundara Mudaliar*, 19 Mad. 211; *Sennanyan Chetty* v. *Sinnapa Servai*, 20 M. L. J. 654 (non-hereditary office); *Sundarammal* v. *Yogavana Gurukkal*, 38 Mad. 850; *Vusachandrakantam* v. *Nasa Subbarayudu*, 1 L.W. 827.

[7] *Manoharam* v. *Poraushankar*, 6 Bom. 298.

[8] *Pakkiam Pillai* v. *Seetharama Vathiar*, 14 M.L.J. 184; *Minakshisundaram Pillai* v. *Chokkalinga Royar*, 15 M.L.J. 10; *Vusa Chandrakantam* v. *Vasa Subbarayadu* 1 L. W. 827; *Matte Sarayya* v. *Veppavathi Vaidyanathan*. 27 M.L.J. 57: 1 L.W. 490.

[9] *Minakshisundaram Pillai* v. *Chocklinga Royar*, 15 M.L.J. 10.

[10] *Matte Saraya* v. *Veppavathi Vaidyanathan*, 27 M.L.J. 57:1 L.W. 490; *Tangirala Chirangivi* v. *Raja Manikya Rao*, 27 M.L.J. 179.

Jurisdiction of Civil Courts in the case of service grants.

Regulation VI of 1831 was the first Regulation in this Presidency which ousted the jurisdiction of Civil Courts from taking cognizance of suits relating to service grants. Section 2 of the Regulation declared that all emoluments derived from lands annexed by the State to hereditary village and other offices in the Revenue and Police Departments were inalienable from such offices by mortgage, sale, gift or otherwise, that transfers made thereafter by the holders thereof were null and void, and that such emoluments were not liable to attachment or other process in satisfaction of decrees of Court. Section 3 barred the jurisdiction of Civil Courts to entertain claims to the possession of, or succession to, such offices, or to the enjoyment of any other emoluments attached thereto, and invested the Collector of the District in which the claim has arisen or may arise with power to adjudicate upon such claims. Provision was made to call in the aid of assessors to assist the Collector in his enquiry. As the necessity for such prohibition ceased when a service grant was enfranchised, Madras Act IV of 1866 removed the restriction on the jurisdiction of Civil Courts. Section 1 of this Act enacted that a service inam which has been enfranchised from the condition of service by the Inam Commissioner was exempted from the operation of Regulation VI of 1831, and Section 2 declared that the title deed issued by the Inam Commissioner or an authenticated extract from his Register was to be deemed sufficient proof of the enfranchisement of the land previously held on service tenure. Regulation VI of 1831 was repealed by Madras Act III of 1895 and its main provisions re-enacted in the latter Act Section 5 of the Act declared that "the emoluments of village offices, whether such offices be or not hereditary, and in the scheduled districts as defined in the Scheduled Districts Act 1874, all such emoluments and other emoluments granted or continued in remuneration for the performance of duties connected with the collection of the revenue or the maintenance of order, shall not be liable to be transferred or encumbered in any manner whatsover, and it shall

not be lawful for any Court to attach or sell such emoluments or any portion thereof." Section 13 (1) authorises the institution of suits for the recovery of village offices and of the emoluments attached thereto before the Collector, and Section 21 ousts the jurisdiction of Civil Courts to try any claim to succeed to any of the village offices, or any question as to the rate or amount of the emoluments of any such offices, except as provided for by the proviso to Section 13 (1), but empowers Civil Courts to set aside the appellate decree passed by Revenue Courts on the ground that no emoluments appertain to the office, if a suit for that purpose is instituted within six months from the date of the appellate decree. Suits before the Collector must be brought within three years from the date of the cause of action, whether it arose before or after the commencement of the Act[1], and in the case of the minority of the claimant, the cause of action accrues only on the date of his attaining majority[2]; applications for execution of decrees passed under the Act are to be made within one year from the date of the decree or order[3], and decrees passed under Regulation VI of 1831 may be executed under the Act, if applications for execution are made either three years from the date of such decree or order, or one year after the commencement of the Act[4]. Limitation for execution of decrees appealed against runs from the date of the appellate decree or order[5]. Power is given to the District Collector to transfer to his file or to that of an Assistant or Deputy Collector not in charge of a division, any suit on the file of a Revenue Officer in charge of a division[6]. Procedure to be adopted in the trial of suits is laid down in Section 16, and Section 17 provides for the award of costs in such suits. Section 18 enables the Collector to refer any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, on which he feels a reasonable doubt, to the Board of Revenue, which is to decide the point so referred. Section 19 provides that all suits brought and appeals made

[1] *Section* 14 (1).
[2] *Ibid.*
[3] *Section* 14 (2).
[4] *Section* 14 (3).
[5] *Section* 14 (4).
[6] *Section* 15.

under Regulation VI of 1831 are to be decided as if they were brought under this Act. An appeal to the District Collector against any order of a subordinate officer is to be brought within one month, and if the order or decree is passed by the District Collector himself, then the appeal lies to the Board of Revenue within three months, and the decision of the District Collector or the Board of Revenue, as the case may be, is final [1]. As exception, however, is made in the case of the holders of the offices of heads of villages or village accountants, to whom a right of second appeal to the Board of Revenue against the order of the District Collector is given [2]. The provisions of Sections 5 and 12 of the Indian Limitation Act are made applicable to suits, appeals or applications for the execution of decrees or orders, instituted, preferred or made under the Act [3].

Cases under Regulation VI of 1831.

Under Regulation VI of 1831, it was held that a suit for the emoluments of the office of *Karnam* in an unsettled District [4], and a suit for mesne profits due to the plaintiff on account of his exclusion from the enjoyment of lands forming the emoluments of an office [5], were not cognizable by Civil Courts. But it was held in *Ravutha Koundan* v. *Muthu Koundan* [6] that the Regulation had no application to a suit brought merely for a declaration that certain lands were emoluments of an office (*nattanmai*). In *Palamalai Padayachi* v. *Shunmuga Asari* [7] which was a suit brought to recover lands attached to the office of *village carpenter*, the Divisional Bench doubted the correctness of the decision in *Ravutha Koundan* v. *Muthu Koundan* [6] and held that they were unable to reconcile this decision either with Section 3 of Regulation VI of 1831, or the decision in *The Collector of Kistna District* v. *Chinnamarazu* [8] and referred the matter to a Full Bench, which though remarking that there was no necessary conflict between the two cases, held that the case came under Regulation VI of 1831 [9].

[1] *Section* 23 (1).
[2] *Ibid.*
[3] *Section* 25.
[4] *The Collector of Kistna District* v. *Chinnamarazu*, 5 M.H.C.R. 360.
[5] *Toppya Pillai* v. *Peddo Pillay*, 5 M. H.C.R. 383.
[6] 13 Mad. 41.
[7] 17 Mad. 302.
[8] 5 M. H. C. R. 360.
[9] *Palamalai Padayachi* v. *Shunmuga Asari*, 17 Mad. 302.

Blacksmith inams also were held to be within the Regulation [1]. As under the Regulation, suits can be brought only before the Revenue Courts, and the Indian Limitation Act did not provide any period of limitation for such suits, no title by prescription could be acquired in respect of lands coming under it [2].

Cases under Act III of 1895.

An *agraharam* is a proprietary village within the meaning of Section 4 of Act III of 1895 read along with Act II of 1894, and therefore a suit for the recovery of the office of *Karnam* thereof is not cognizable by Civil Courts [3]; so also is a suit for the recovery of the office of *Ambalam* in an inam village [4]. A suit for a village officer's inam on the expiry of a lease granted by such village officer to the defendant is cognizable by Civil Courts [5]; so also is a suit to recover lands not based on the ground that they constituted part of the emoluments of an office described in Section 13 [6]. There was a difference of opinion in the Madras High Court whether a *village artizan* came within the prohibition contained in clause 4 of Section 3. The cases of *Veerabadran Achari* v. *Suppiah Achari* [7] and *Chinnayya Asari* v. *Annayappa Mooniappa Mudali* [8] held that it did not, while the opposite view was taken in *Karnam Naidu* v. *Latchanna Dora* [9] and *Mutgala Bapayya* v. *Kosuri Muramulla* [10] and the Full Bench in *Kandappa Asary* v. *Vengamma Naidu* [11] agreed with the latter view. A grant of a permanent lease of lands forming the emoluments of an office is not a transfer of proprietary right or ownership, and is not invalid [12]. It is wholly beyond the power of the holder of an unenfranchised inam governed by Act III of 1895 to grant a lease extending beyond his

[1] *Pichuvayyan* v. *Vilakkudayan*, 21 Mad. 134.

[2] *Pichuvayyan* v. *Vilakkudayan*, 21 Mad. 134; *Srinivasa Varadachary* v. *Narasinga Pillai*, (1911) 1 M.W.N. 208.

[3] *Andirazu Verrayya* v. *Andirazu Sangayya*, 34 Mad. 177.

[4] *Sundra Pandia Thevan* v. *Velathiappa Thevan*, 26 Mad. 490.

[5] *Muvvula Seetharam Naidu* v. *Doddi Rami Naidu*, 33 Mad. 208.

[6] *Gavara Ramanna* v. *Adabala Rattayya*, 33 Mad. 235.

[7] 33 Mad. 488.

[8] 7 M. L. J. 264.

[9] 23 Mad. 493.

[10] 22 M. L. J. 156.

[11] 37 Mad. 548.

[12] *Kshetrabaro Bissoyi* v. *Sobkanapuram Harikristna Naidu*, 33 Mad. 340; *Kammara Peda Subbayya* v. *Karashe Chennappa*, 28 M.L.J. 303.

life [1]. The jurisdiction of the Civil Court is excluded by Section 21 in cases in which the plaintiff sues for lands as the emoluments of his office and the defendant resists the claim on the ground that they are not the emoluments of the office [2]. But where the plaintiff states that the lands do not form the emoluments of the office and defendants deny it, the jurisdiction of the Civil Courts is not barred [3]. Where the Collector has jurisdiction to decide whether lands are the emoluments of an office or not, his decision cannot on general principles of *res judicata*, be re-agitated in the Civil Courts [4].

---

[1] *Kammara Peda Subbayya* v. *Karasha Chennappa*, 28 M. L. J. 303.

[2] *Kesiram Narasimhulu* v. *Narasimhulu Patnaidu*, 30 Mad. 126.

[3] *The Secretary of State* v. *Subbarayudu*, 23 M.L.J. 728.

[4] *Balijepalli Seshayya* v. *Balijepalli Subbayya*, 30 Mad. 320.

CHAPTER IX.

SERVICE GRANTS—RESUMPTION AND ENFRANCHISEMENT.

Resumption.

Resumption consists in putting an end to the grant under which the lands are held, remitting the services and requiring the holder to pay full assessment [1]. In *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmasawmy Venkatadry Naidu*, [2] the suit was brought by a zemindar only for the recovery of arrears of the full rent imposed on lands previously held on *Amaram* tenure on the services being dispensed with, and absolute dispossession was neither attempted nor intended. There is nothing to prevent the grantor from suing for the possession of the lands after the services have been dispensed with, and from granting them to another, though as pointed out by *Bhashyam Ayyangar, J.* in *Gunnaiyan* v. *Kamakshi Ayyar* [3], no purpose will be gained by the adoption of such a course. The grantor may, when he resumes the land, alter its tenure into a perpetual grant upon a fixed payment [4] and until this is done, he can go on increasing the rent as time goes on [5]. It has, however, been held in *Gajapati Maharaju Garu* v. *Sonti Prahlada Binoyi Ranto* [6] that, when the services of the holder of a *darmilla* inam (inam

[1] *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmasawmy Venkatadry Naidu*, 7 M.I.A. 128 (142); *Boddupalli Jagganadham* v. *The Secretary of State*, 27 Mad. 16; *Gunnaiyan* v. *Kamakshi Ayyar*, 26 Mad. 339 (346); *Sreevadhu Yerranna* v. *Pontiva Kannamma*, 21 M. L.J. 962; See *Idubilly Seyyaddi* v. *Raja Viswasvara Nissanka*, 18 M.L. T. 142.

[2] 7 M.I.A. 128.

[3] 26 Mad. 339 (346, 360).

[4] *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmasamy Venkatadry Naidu*, 7 M. I.A. 128 (140).

[5] Cf. *Sitaramarazu* v. *Ramachendrarazu*, 3 Mad. 367; *Vadisapu Appandora* v. *Vyricherla Veerabadraju Bahadur* (1911) 2 M. W.N. 406; 10 M. L. T. 391.

[6] (1914) M. W. N. 179; *Idubilly Seyyaddi* v. *Sri Rajah Viswaswara Nissanka*, 18 M. L. T. 142.

granted subsequent to the permanent settlement) in a zemindary are dispensed with, he acquires an occupancy right therein, and is not liable to ejectment. In the case of the Government also, as in the case of zemindars, no purpose will be gained by resuming the land and granting it to another, and under the rules framed by Government governing such cases, dispossession is not at all contemplated, if the holder agrees to pay the full assessment levied on it, and the effect of resumption is to classify the land previously held on inam tenure under the head of ryotwari. There is, however, a distinction between a resumed and enfranchised land. In the former case the assessment can be increased at each periodical assessment, which cannot be done in the latter case.

Nature of resumption.

What is the nature of the resumption exercised by the Government in assessing to revenue lands not hitherto subject to it? Is it of the nature of an Act of State which prevents municipal courts from inquiring into it, or merely an act done under colour of a legal title? The first case in which the question arose was the case of *The East India Company* v. *Syed Ally* [1]. In that case the Nawab of the Carnatic granted a *Jagir* to Assim Khan and his heirs, which was afterwards confirmed by his successor. Subsequently, in pursuance of a treaty entered into between the East India Company and the then Nawab of the Carnatic, whereby the sovereign rights of the Nawab over the Carnatic were ceded to the East India Company, the latter resumed the *Jagir* on the death of Assim Khan and regranted it to one of his sons for life dependent on the British Government, and reserving to itself sayer, salt and saltpetre duties. The other legal heirs of Assim Khan under the Mahomedan law sued the East India Company for a declaration that the resumption and regrant were invalid. The Privy Council held, reversing the decision of the Supreme Court of Madras, that the resumption and regrant were acts of sovereignty which precluded the municipal courts from taking cognizance of the claim. This case was followed by the Privy Cuncil in *The Secretary of State* v.

[1] 7 M.I.A. 555; *Mahomed Kadir* v. *Ghumal Mahomed Ali*, 28 I.C. 934.

Kamachee Boye Saheba [1]. These cases were sought to be applied by the Government in the case of *Forester* v. *The Secretary of State* [2]. In this case the Begum Sumroo held certain *Jagirs* in the Doab under Daulat Rao Scindia upon a *Jaidud* tenure *i.e.* upon a tenure of a certain district together with the public revenue of it, on condition of keeping up a body of troops, to be employed when called upon in the service of the sovereign under whom the *Jagir* was held. On the cession of the Doab by Daulat Rao Scindia in 1803 which included the *Jagirs* held by the Begum Sumroo, the British Government in consideration of the services rendered by her in the war with Scindia, entered into an agreement with her in 1805, whereby it was agreed that she was to hold for her life her territories in the Doab from the East India Company as she had held them before under Scindia. On her death the British Government resumed the *Jagirs* and the question was raised as to the character of such resumption. The Privy Council referring to the Tanjore case [3] said "There the Raja of Tanjore, though he may have had less substantial power than that exercised by the Begum Sumroo, retained at least the shadow of original and independent sovereignty. Lord Kingsdown thus puts the question :—'What was the real character of the act done in this case? Was it a seizure by arbitrary power on behalf of the Crown of Great Britain of the dominions and property of a neighbouring State, an act not affecting to justify itself on grounds of municipal law? or was it, in whole or in part, a possession taken by the Crown under colour of legal title of the property of the late Rajah of Tanjore in trust for those who, by law, might be entitled to it on the death of the last possessor. If it were the latter, the defence set up has no foundation," and observed "The act of Government in this case was not the seizure by arbitrary power of territories which up to that time had belonged to another Sovereign State; it was the resumption of lands previously held from

[1] 7 M. I. A. 476.

[2] I.A. *Sup. Vol.* 10: 18 W.R. 349; *Hari Sadasiv* v. *Shaik Ajmudin*, 11 Bom. 235.

[3] *The Secretary of State* v. *Kamachee Boye Sahaba*, 7 M. I. A. 476.

the Government under a particular tenure, upon the alleged determination of that tenure. The possession was taken under colour of a legal title, that title being the undoubted right of the Sovereign power to resume, and retain or assess to public revenue, all lands within its territories upon the determination of the tenure, under which they may have been held exceptionally rent free. If by means of the continuance of the tenure or for other cause, a right be claimed in derogation of this title of the Government that claim, like any other arising between the Government and its subjects would *prima facie* be cognizable by the municipal courts of India." The same point arose in *Karunakara Menon* v. *The Secretary of State* [1] but was left undecided. It must be noticed, as pointed out by the Privy Council [2] that the cases of *The Secretary of State* v. *Syed Ally* [3], *The Secretary of State* v. *Kamachee Boye Saheba* [4], *Karunakara Menon* v. *The Secretary of State* [5], and *Mahomed Kadir* v. *Ghulam Mahomed Ali* [6], related to transactions with either the Raja of Tanjore or the Nawab of the Carnatic who was an independent prince exercising sovereign rights within his territories.

No limitation for resumption.

The right of the Government to resume and to levy assessment on lands not hitherto subject to it, is a right not conferred by any legislative enactment, but is one exercised from time immemorial by virtue of sovereign prerogative, and therefore there is no period of limitation within which alone the Government should exercise that right [7]. It is not bound to exercise its right of resumption; and when it does, can exercise it even partially [8]. In the case of personal grants granted for life or lives, it resumes on the expiration of the life or lives for which they were granted; in the case of hereditary grants, on breach of any of the conditions under which they are

When liable to resumption.

[1] 14 Mad. 431.

[2] *Forester* v. *The Secretary of State*, L. R. I. A. *Sup. Vol.* 10: 18 W.R. 349.

[3] 7. M.I.A. 555.

[4] *Ibid*, 476.

[5] 14 Mad. 431.

[6] 28 I.C. 934.

[7] *Boddupalli Jagganadhan* v. *The Secretary of State*, 27 Mad. 16; *Subramani Chettiar* v. *The Secretary of State*, (1915) M. W. N. 276: 2 L. W. 353.

[8] Per *Bhashyan Ayyangar J.*, in *Gunnaiyan* v. *Kamakshi Aiyyar* 26 *Mad.* 339.

understood to be held; in the case of service grants, when the necessity for their continuance no longer exists; and in the case of grants for religious or charitable purposes, or for purposes of public utility, when the conditions of the grant are not fulfilled. The Government alone has got the power of resuming grants for public purposes. As the permanent settlement with zemindars has been made exclusive of all lakhiraj lands [1], and as they are declared incompetent to resume and fix a new assessment on them [2], the Government alone has got the right of resuming those inams, *pre-settlement inams*, as they are called [3]. The ownership therein is vested in the inamdars subject to resumption by government [4]. In some cases, only the jodi payable on inams is included in the assets at the time of the permanent settlement. In such cases, the zemindar has no right to them beyond the collection of the jodi, the power of resuming them being vested in Government [4]. The Government can enfranchise lands only in favour of the inamdar, or the holder of the inam, and cannot issue a patta in favour of the zemindar within whose zemindari the inam is situated, if he is unwilling to receive it [5], and cannot issue pattas to the zemindar simply because it is not able to localize or identify the inam [6]. It has no right to resume an inam granted by the proprietor of an estate subsequent to the permanent settlement [7]. In order that the government may have the right of resumption thereto, the right to it must have emanated in the first instance from it, or the continuance of it must have been due to an act of the government [8].

Who can resume inams.

[1] *Regulation*, XXV of 1802, *Section* 4.

[2] *Ibid*, *Section* 12.

[3] *The Secretary of State* v. *The Raja of Pittapur*, (1913) M. W. N. 478 : 24 M. L. J 530; *Rama Rao* v. *The Secretary of State* (1913) M. W. N. 639; *Tadikonda Buchi Virabadrayya* v. *Sonti Venkanna*, (1913) M. W.N. 782.

[4] *Tadikonda Virabadrayya* v. *Sonti Venkanna*, (1913) M.W. N. 782.

[5] *The Secretary of State* v. *The Raja of Pittapur*, 24 M. L. J. 530 : (1913) M.W.N. 478.

[6] *Rama Rao* v. *The Secretary of State*, (1912) M. W. N. 542; *The Secretary of State* v. *The Raja of Pittapur*, 24 M. L. J. 530 : (1913) M. W. N. 478; *Rama Rao* v. *The Secretary of State*, (1913) M. W. N. 639.

[7] *The Secretary of State* v. *Bhanamurthy*, 24 M. L. J. 538.

[8] *Ibid.*

The zemindar is the owner of pre-settlement inams when their full rental has been included in the assets of the zemindary at the time of the permanent settlement [1], and of all inams granted by him subsequent to that date [2]. When in any particular case, any question arises whether the rental of an inam has been included in the assets or not who is to prove it? In *Forbes* v. *Meer Mahomed Tuquee* [3] and in *Hurryhur Mookhoopadya* v. *Madhub Chunder Baboo* [4], the Privy Council held that the mere fact that lands are situated within the geographical limits of the zemindary did not show that they were the *mal* (revenue paying) lands which the zemindar was entitled to resume, and that the onus was on him to show that they were so included. The Calcutta High Court is not unanimous on this point. The cases of *Bishnath Chowdry* v. *Radha Charan Gangooly* [5], *BacharamMundul* v. *Peary Mohun Banerjee* [6], and *Narendra Narayan Rai* v. *Bhishun Chendra Das* [7] followed the decision of the Privy Council, while a contrary view was taken in *Newaj Bandopadya* v. *Kali Prosonno Ghose* [8] and *Akbur Ali* v. *Byea Lal Jaha* [9]. In preference to the above observations of the Privy Council in the above two cases, the Madras High Court followed the observations of *Sir Barnes Peacock* in *Raja Nilomoney Singh* v. *The Government* [10], quoted without disapproval by the Privy Council in *Raja Nilmoni Singh* v. *Backranath Singh* [11], that "the Government would not have allowed any portion of their revenue in

[1] *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmaswamy Venkatadry Naidu*, 7 M. I. A. 128; *Forbes* v. *Meer Mahomed Tuquee*, 13 M. I. A. 439 (460); *Hurryhur Mookkopadya* v. *Modhub Chunder Baboo*, 14 M. I. A. 152; *Sri Sobanadri Appa Rao Bahadur* v. *Sri Raja Venkatanarasimha Appa Rao Bahadur*, 26 Mad. 493; *Raja Parthasarady Appa Rao Bahadur* v. *The Secretary of State* 38 Mad. 620; *Suryanarayana Razu* v. *The Secretary of State*, 1 L. W. 662; *The Maharaja of Jeypore* v. *Sri Rukmini Pattamahadevi Garu*. 2 L. W. 483: (1915) M. W. N. 346.

[2] *Sitaramarazu* v. *Ramachendra Razu*, 3 Mad. 367; *Sanniyasi Razu* v. *Zemindar of Salur*, 7 Mad. 268; *Mahadevi* v. *Vikrama*, 14 Mad 365; *Vadisapu Appandora* v. *Vyricherla Virabadraraju Bahadur*, (1911) 2 M. W. N. 406; *Gajapati Maharaja Garu* v. *Sonti Prahlada Benoyi Ratno*, (1914) M. W. N. 179; *Radha Persad Singh* v. *Budhu Dashad*, 22 Cal 938.

[3] 13 M.I.A. 439 (458).

[4] 14 M I.A. 152 (174).

[5] 20 W.R. 465.

[6] 9 Cal. 813.

[7] 12 Cal. 182.

[8] 6 Cal. 543.

[9] 6 Cal. 666.

[10] 6 W. R. 121, affirmed by the Privy Council in 18 W.R. 321.

[11] 9 I.A. 104 (121).

consideration of private services to be rendered to the zemindar" and held that, in cases of inams granted by the zemindar before the permanent settlement, whereby private or personal services were reserved, there was a presumption that they were included in the assets at the time of the permanent settlement, and that the onus was on the government to show that they were not so included [1]. But the inclusion of a *pre-settlement inam* in the assets of the zemindary at the time of the permanent settlement will not prejudice the right of the inamdars [2]. Though a grant is hereditary, it is still liable to resumption, if the circumstances are such that the zemindar can resume it [3]. In the absence of the terms of the grant, an adoptive son is entitled to succeed in the place of the adoptive father, and the grant does not cease to have any operation on the death of the adoptive father [4].

Grounds of resumption.

Though the zemindar is the owner of such inams and has got a *prima facie* title to resume them, his right to resume depends on other circumstances. They were set out by the Privy Council in the case of *Forbes* v. *Meer Mahomed Tuquee*[5]. In that case a rent-free jagir had been granted by the East India Company to the ancestor of the defendant in 1775 in consideration of his past services in preventing the incursions of elephants upon the cultivated lands of the pergannah and his future services in the same way whereby cultivation might be extended and the ryots protected. In 1850 the zemindary in which the jagir was situated was sold for arrears of government revenue and the purchaser at the revenue sale sought to resume the jagir on the ground that the services were no longer required. His claim was rejected. The Privy Council held that after such a long and undisturbed possession, it lay on the purchaser to make out a clear title to resume which he failed to do. They observed, "The conclusion

Forbes v. *Meer Mahomed Tuquee.*

[1] *Raja Venkatarangayya Appa Rao* v. *Appalarazu*, 20 M.L.J. 728; *Raja Parthasaradhy Appa Rao* v. *The Secretary of State*, 38 Mad. 620; *Suryanarayana Razu* v. *The Secretary of State*, 1 L.W. 662.

[2] *Forbes* v. *Meer Mahomed Tuquee*, 13 M.I.A. 438 (460).

[3] *Lakshmi* v. *Chendri*, 8 Mad. 72.

[4] *Boyanapalli Venugopala Rao* v. *Pathapalli Venkata Narasimha Rao*, (1911) 2 M.W.N. 384.

[5] 13 M. I. A. 438.

which they would draw from the decided cases, as well as from the reason of the thing is, that in every case the right to resume must depend in a great measure upon the nature of the particular tenure, or the terms of the particular grant. They agree with the observation of Mr. Justice *Jackson*, Weekly Reporter. Vol. 6 p. 209 [1], that there is a clear distinction between the grant of an estate burdened with a certain service and the grant of an office the performance of whose duties are remunerated by the use of certain lands. They have already stated that, in their opinion, the grant in question does not fall within the latter category. Assuming it to be a grant of the former kind, their Lordships do not dispute that it might have been so expressed as to make the continued performance of the services a condition to the continuance of the tenure. But, in such a case, either the continued performance of the service would be the whole motive to, and consideration for, the grant, or the instrument would, by express words, declare that, the service ceasing, the tenure should determine. It appears to their Lordships that neither the first nor the second *Sunnud* is a grant of the kind last mentioned. Each proceeds in part upon the past services of *Meer Syud Ally*; nor is the consideration, so far as it is unexecuted, wholly the keeping up of a body of men to repel the incursions of the elephants, for the grantees are also to cultivate the waste land. The latter stipulation was probably designed to protect the already cultivated districts of Pergunnah Sultanpore by interposing a further belt of cultivation between them and the forest. Hence the grant may be said to have been made *pro servitiis impensis et impendensis*—partly as a reward for past, partly as an inducement for future, services. Again, neither *Sunnud* contains any words which expressly import that the tenure shall cease if and when any of the services cease to be performed. Such a provision is something very different from one which merely casts upon the grantee the performance of certain duties so long as they are necessary. The former makes

[1] *Baboo Kooldeep Narain Singh* v. *Mahodeo Singh.*

the grant determinable where there is no further occasion for the services. But, in the latter case, if the operation of any natural cause (as, *e. g.* the progress of cultivation, which has caused the wild elephants to cease out of the land) removes the necessity for the services, the grantee will hold the land freed from the condition originally imposed on him. Their Lordships are, therefore, of opinion, that upon the true construction of these *Sunnuds* the grantees, though bound to protect the Pergunnah from the incursions of wild elephants so long as those incursions lasted; and though still bound to do so should, by any chance, those incursions be renewed; and though they may be liable to forfeit the tenure if they wilfully fail in the performance of this duty, are not liable to have their lands resumed because there is no longer any occasion for the performance of this particular service, 'there being no fear of the depredations of elephants in those places" [1]. Thus, as affecting the right of the zemindar to resume, service grants may be divided into four classes, (*a*) grants for service of a public nature; (*b*) grants for service, private or personal; (*c*) grants of estates burdened with service; and (*d*) grant of an office the performance of whose duties is remunerated by the grant of certain lands.

(*a*) *Grants for services of a public nature*:—

Grants for public service.

These are grants which involve police or magisterial duties or in which the commuuity or a portion of it are interested. The grantor is not competent to resume them, even if the grantee fails or refuses to perform the services, but the Government alone can[2]. If a grant involves personal service to the grantor and public service to the state, the grantor cannot, by dispensing with the personal service, take possession of the lands and hold them discharged of the obligation

[1] 13 M. I. A, 464-666; *Kooldeep Narain Singh* v. *The Government* 14 M. I. A. 247; *Sitaramarazu* v. *Ramachendra Raju*, 3 Mad. 367; *Sri Sobanadiri Appa Rao Bahadur* v. *Sri Raja Venkatanarasimha Appa Rao Bahadur*, 26 Mad. 403; *Bhimapaiya* v. *Ramachendra Bhimarao*, 22 Bom. 422; *Lakham Gowda* v. *Keshava Annaji*, 28 Bom. 305; *Radha Persad Singh* v. *Budhu Dashad*, 22 Cal. 938; *Brojo Nath Basu* v. *Raja Sri Sri Durga Persad Singh*, 5 C. L. J. 583.

[2] *Raja Nilmoney Singh* v. *The Government*, 18 W.R. 321 (P.C.); *Radha Persad Singh* v *Budhu Dashad*, 22 Cal. 938; Cf. *Sri Raja Parathasarathy Appa Rao* v. *The Secretary of State*, 38 Mad. 620.

for the public benefit [1]. Where a tenure was created long before the permanent settlement and the Government received two-thirds of the annual value of the land and allowed the tenant to receive the remaining one-third for services, the services for which it was given must be presumed to be public, for the Government would not have allowed any portion of its revenue for private services [2].

Grants for personal service.

(b) *Grants for services, private or personal* :—

These grants are distinguished from those in class (*a*). The grantor is entitled to resume them when the services cease, or are dispensed with, whether they were granted before the permanent settlement [3] or subsequent to it [4]; in the former case, their rental must have been included in the assets. It has been held that, in the case of a grant made subsequent to the permanent settlement, the onus is on the grantee to show that it was not in lieu of wages, but was one burdened with service [5]. A grant may be hereditary but still liable to resumption if the zemindar can resume it [6]. The following grants have been held to be personal grants, which the zemindar was entitled to resume :—Grants for *gadaba* service [7]; grants for the service of keeping a number of paiks [8]; grants for *batraju* or *minstrel* service [9]; grants for

[1] *Joykishen Mookerjee* v. *The Collector of East Burdwan*, 10 M.I.A. 16 (45).

[2] *Raja Nilmoney Singh Deo* v. *The Government*, 6 W. R. 121 : affirmed by the Privy Council in *Raja Nilmoney Singh* v. *The Government*, 18 W. R. 321.

[3] *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmasamy Venkatadry Naidu*, 7 M. I. A. 128 ; *Forbes* v. *Meer Mahomed Tuquce*, 13 M. I. A. 439; *Raja Nilmoney Singh* v. *The Government*, 18 W. R. 381 (P. C,); *Raja Venkatarangayya Appa Rao* v. *The Secretary of State*, 20 M.L. J. 728; *Raja Parthasarathy Appa Rao* v. *The Secretary of State*, 38 Mad. 620; *Suryanarayana Razu* v. *The Secretary of State*, 1 L. W. 662.

[4] *Sitaramarazu* v. *Ramachandra Razu*, 3 Mad. 367; *Sanniyasi Razu* v. *Zemindar of Salur*, 7 Mad. 268; *Mahadevi* v. *Vikrama*, 14 Mad. 365; *Vadisapu Appandora* v. *Vyricherla Virabadraraju* (1911) 2 M. W. N. 406 ; *Gajapati Maharaja Garu* v. *Sondi Prahalada Benoyi Ratno.* (1914) M. W. N, 179.

[5] *Sanniyasi Razu* v. *Zemindar of Salur*, 7 Mad 268; *Mahadevi* v. *Vikrama* 14 Mad. 365; *Sri Raja Visveswara* v. *Gorla Budardo*, (1910) M. W, N, 436; *Vadisapu Appundora* v. *Vyricherla Veerabadarraju Bahâdur* (1911) 2 M. W. N. 406.

[6] *Lakshmi* v. *Chendri*, 7 Mad. 82.

[7] *Sanniyasi Razu* v. *Salur Zemindar*, 7 Mad. 268; *Sri Raja Visveswara* v. *Gorla Budarado*, (1910) M.W.N. 436 ; *Suryanarayana Razu* v. *The Secretary of State*, 1 L. W. 662 ; *Idubilly Siyyadi* v. *Raja Visweswara Nissanka*, 18 M. L. T. 142.

[8] *Mahadevi* v. *Vikrama*, 14 Mad. 365.

[9] *Sri Raja Venkatarangayya Appa Rao* v. *The Secretary of State*, 20 M. M. L. J. 726.

attending on the grantor, following him with arms and guarding his treasury [1] ; a grant for attending the estate office for 15 days in the year, for doing the service of errand going, guarding treasury, collecting rents, serving demand notices, going in guard of money sent to the Collector's office, accompanying the zemindary officials on tour and taking letters [2] ; *Amaram* grants [3] ; *Kattubadi* grants [4] ; grants for service of *gorait* (village watchman) [5] ; grants for service of cook [6]. The grantor is entitled to dismiss the holder of lands held on Japam service, if he does not perform it [7]. But where lands are granted subject to attendance at the grantor's court on ceremonial occasions, such a provision is not a condition of the grant and non-observance thereof will not entail forfeiture of the grant [8]. Where a tenure has been in existence from before the permanent settlement, and the nature of the services to be rendered by the grantee was not mentioned in the grant, it was held by the Privy Council, that the onus was on the zemindar to show that the services reserved by the grant were personal [9].

Grants burdened with services.

(c). *Grants of estates burdened with services* are those in which lands are granted outright subject only to the performance of certain specified services. These classes of grants may be so expressed as to make the continued performance of the services a condition to the continuance of the tenure ; and unless they are so expressed, the grantor will have no right to resume them, if the grantee is able and willing to perform the services,

[1] *Sri Raja Parthasaradhi Appa Rao* v. *The Secretary of State*, 38 Mad. 620.

[2] *Gajapatis Maharaja Garu* v. *Sondi Prahalada Benogi Ratno*, (1914) M. W. N. 179.

[3] *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmasamy Venkatadri Naidu*, 7 M. I. A. 198 ; *Narasayya* v. *Venkatagiri Raja*, 23 Mad. 262 ; *Raja of Venkatagiri* v. *Mukku Narasayya*, 37 Mad. 1.

[4] *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmasamy Venktadry Naidu*, 7 M. I. A. 128.

[5] *Radha Persad Singh* v. *Budhu Darhad*, 22 Cal. 938.

[6] *Keval Kuber* v. *The Taulqdari Settlement officer*, 1 Bom. 586.

[7] *Muthu Alagappa Chetty* v. *Ramalinga Gurukkal*, (1910) M.W. N. 501.

[8] *Maharaja of Jeypore* v. *Sri Rukkumini Pattamahadevi*, 2 L. W. 483 : (1915) M.W.N. 346.

[9] *Raja Nilmoney Singh Deo* v. *The Sovernment*, 18 W.R. 321.

even though they are no longer required [1]. A Mukhasa village was granted to the ancestor of the defendant at a quit rent of Rs. 144 per annum at a period long antecedent to the introduction of the British Government, and the services to be rendered were the supply of one naik and fourteen peons. The facts proved in the case were (1) no office by any particular description was conferred upon the grantee but an obligation of a feudal character was imposed on him ;(2) services had been rendered intermittently and not continuously; (3) the grantee and his heirs were paid in money, when they actually performed such services ; (4) that a uniform rent of Rs. 144 a year for 120 years was paid without alteration at any time ; (5) the land descended from father to son hereditarily ; (6) there had been no instance of resumption, or even an attempt at resumption during all this time ; and (7) there had been no attempt to enhance or alter the rent or to interfere with the devolution of the property from father to son. These facts were held by the Privy Council to be sufficient to establish that the grant was one burdened with service [2].

Grants in ermuneration of services.

(d) *Grant of an office the performance of whose duties is remunerated by grants of land.*

These classes of grants can be resumed by the grantor when he dispenses with the services, or when the necessity for them has ceased [3]. In grants made subsequent to the permanent settlement, the onus lies on the defendant to

[1] *Forbes* v. *Meer Mahomed Tuquee*, 13 M. I. A. 439; *Lilanand Singh* v. *Munorunjan Singh*, 13 Ben. L. R. 124: L.R.I.A. Sup. Vol. 181; *Sri Sobanadri Appa Rao Bahadur* v. *Sri Venkatanarasimha Appa Rao Bahadur*, 26 Mad. 403; affirmed by the Privy Council in *Venkat Narasimha Appa Rao Bahadur* v. *Sobhanadiri Appa Rao Bahadur*, 29 Mad. 52: 33 I.A. 46; *Vadisapu Appandora* v. *Vricherla Virabadraraju Bahadur*, (1911) 2 M.W.N. 406; *Bhimapaiya* v. *Ramachendra Bhimarao*, 22 Bom. 422; *Lakham Gowda* v. *Keshava Annaji*, 28 Bom. 305; *Radha Persad Singh* v. *Budhu Dasad*, 22 Cal. 938; *Broja Nath Bose* v. *Raja Sri Sri Durga Persad Singh*, 5 C. L. J. 583.

[2] *Venkata Narasimha Appa Rao Bahadur* v. *Sobhanadri Appa Rao Bahadur*, 29 Mad. 52 : 33 I. A. 46 ; affirming *Sobhandri Appa Rao Bahadur* v. *Venkatanarasimha Appa Rao Bahadur*, 26 Mad. 403.

[3] *Forbes* v. *Meer Mahomed Tuqree*, 13 M.I.A. 439 ; *Sitarama Razu* v. *Ramachendra Razu*, 3 Mad. 367 ; *Sobhanadri Appa Rao Bahadur* v. *Venkatanarasimba Appa Rao*, 26 Mad. 403 ; affirmed by the Privy Council in *Venkata Narasimha Appa Rao* v. *Sobhanadri Appa Rao*, 29 Mad. 52: 33 I. A. 46 ; *Vadisapu Appandora* v. *Vyricherla Virabadraraju Bahadur*, (1911) 2 M. W. N. 406 ; and the other cases under note (1)

show that they were not in lieu of wages [1]. Where a grant of land was made on service tenure; and the kattubadi was enhanced once, and the enhanced kattubadi was paid, it was held that those facts warranted the inference that the grant was not one burdened with service [2]. In *Vadisapu Appandora* v. *Vyricherla Veerabadraraju Bahadur* [3], the facts proved were, (1) a *mukhasa* village was granted by a zemindar after the permanent settlement; (2) the kattubadi was increased twice; (3) it was resumed once; (4) the kattubadi was treated as *talab diwani* kattubadi; (5) and it was hereditary in the grantee's family. These facts were held to justify the inference that the grant was one in lieu of wages and not one burdened with service.

Notice of resumption.

Before the zemindar resumes, the grantee is entitled to reasonable notice [4]; and in the absence of such notice, a suit by him for resumption is liable to be dismissed [5]. But, where the grantee refuses to perform service, he is liable to be ejected without notice [6].

Limitation.

Where lands are held on tenure of service, the mere non-rendering of service for any length of time will not constitute adverse possession of the lands so as to bar the grantor's right of resumption [7]. In order to constitute adverse possession, there must be a refusal to perform service or a claim to hold the lands free of service [8].

Enfranchisement.

Enfranchisement consists in giving up the reversionary right of the Crown in lands previously held on inam tenure on payment of an annual quit-rent and converting them into ordinary, heritable, and transferable property. When, therefore, a personal inam is enfranchised by the

[1] *Sanniyasi* v. *Zemindar of Salur*, 7 Mad. 268; *Mahadevi* v. *Vikrama*, 14 Mad. 365; *Sri Raja Visweswara* v. *Gorla Budarado*, (1910) M. W. N. 436; *Vadisapu Appandora* v. *Vydricherla Veerabadaraju Bahadur*, (1911) 2 M. W. N. 406.

[2] *Sitaramarazu* v. *Ramachendrarazu*, 3 Mad. 367.

[3] (1911) 2 M. W. N. 406.

[4] *Unide Rajaha Raja Bommarauze Bahadur* v. *Pemmasamy Venkatadry Naidu*, 7 M. I. A. 128; *Lakshmi* v. *Chendri*, 8 Mad. 72; *Narasayya* v. *Venkatagiri Raja*, 23 Mad. 262; *Radha Persad Singh* v. *Budhu Dashad*, 22 Cal. 938.

[5] *Lakshmi* v. *Chendri*, 8 Mad. 72; *Narasayya* v. *Venkatagiri Raja*, 23 Mad. 262; *Radha Persad Singh* v. *Budhu Dashad*, 22 Cal. 938.

[6] *Hurrogobind Raha* v. *Ramrutno Dey*, 4 Cal. 67; *Ansar Ali Jamadar* v. *Grey*, 2 C. L. J. 203; *Bijoychand Mahatab* v. *Kalipada Chatterjee*, 41 Cal. 57.

[7] *Komargowda* v. *Bhimaji*, 23 Bom. 602.

[8] *Ibid.*

imposition of quit-rent, the resumption simply consists of so much of the assessment or melwaram as is equal to the quit-rent, neither the land nor the assessment in excess of the quit-rent being resumed [1].

Inam Commission.

The Government had always claimed a reversionary right in all inams, and Regulation IV of 1831 was passed, which ousted the jurisdiction of Civil Courts in respect of claims to personal grants, unless permitted by the Governor-in-Council. The intention of the Government in passing the Regulation was to safeguard its reversionary rights. The next step taken to carry out that intention was the framing of rules by Government, under which the title to the inam was scrutinized on the occasion of the inamdar's death, and orders were passed as to whether it lapsed to the Crown, or whether it was to be continued to his successor, and if so, whether subject to any and what terms. The next change was the removal of the uncertainty in which the recurring scrutiny under the lapse rules involved the title to the inam, and in 1859 rules were framed for enfranchising the inam grants by surrendering the reversionary interests of the Crown for an equivalent quit-rent and placing enfranchised inams on the footing of private property, and an Inam Commissioner was appointed who was authorised to sell the reversionary rights of the Crown, and to issue a title deed to the inamdar in proof of such enfranchisement [2]. As a result of these proceedings Madras Act IV of 1862 was passed, which exempted enfranchised *personal* inams from the operation of Regulation IV of 1831, and declared that the title deed issued by the Inam Commissioner or an authenticated extract from his register or that of the Collector was to be deemed sufficient proof of such enfranchisement. As the title deeds issued by the Inam Commissioner were found to be not in the form laid down by Statute 22 and 23 Vict., Cap. 41, Statute 32 and 33 Vict., Cap. 29 was passed validating them. The inam commission continued as a separate department up to November 1869, when the bulk of the work having

[1] Per *Bhashyam Ayyangar, J.* in *Gunnaiyan* v. *Kamakshi Ayyar*, 26 Mad. 339.

[2] *Rama* v. *Subba*, 12 Mad. 98.

been completed, and under a pressing necessity for the reduction of imperial expenditure, it was resolved to abolish the department and the Inam Commissioner was asked to submit his general report. The work which remained to be done was entrusted to a Member of the Board of Revenue, who was appointed Inam Commissioner *pro forma* and to satisfy legal requirements [1]. The declared policy of the Government, when the Inam Commissioner was appointed in 1859 and rules framed for his guidance, was to waive its right of resumption and enfranchise personal inams and convert them into ordinary heritable property and forego its reversionary rights in consideration of the holder of the inam agreeing to pay a quit-rent, the rates of which varied with reference to the value and prospect of the reversionary claim of the Government in each case [2].

Effect of Inam title deed. Personal grants.

As the title deed issued by the Inam Commissioner purported to confirm to the grantee the enfranchised land in freehold or as his absolute property, and doubts arose what was the interest actually conveyed under it, Act VIII of 1869 was passed, which enacted that the Inam title deed was not meant to define, limit, infringe destroy the rights of any description of holders or occupiers of land, or to affect the interest of any person other than the holder of the inam. In *Cherukuri Venkanna* v. *Lakshmi Narayan Sastrulu* [3], it was held that the inam title deed issued by the Inam Commissioner was only evidence of the enfranchisement of lands previously held as inam, and the only effect of the enfranchisement was to remove from the claimant the disabilities to sue in the ordinary Courts, and it did not operate as a resumption and regrant, and the real owner of the inam could sue for recovery of the land from the person to whom the inam title deed was issued. But in *Subbu Naidu* v. *Nagayya* [4] it was held that, when a personal inam was enfranchised, the reversionary rights of the Crown were not given up; and *Subramania*

[1] *Man of Adminis*, I. 167, note (1).

[2] Per *Bhashyam Ayyangar*, J. in *Gunnaiyan* v. *Kamakshi Ayyar*, 26 Mad. 339.

[3] 2 M. H. C. R. 327; *Narayana* v. *Chengammal* 10 Mad, 1 ; *Gunnaiyan* v. *Kamakshi Ayyar*, 26 Mad. 339.

[4] 25 M. 424.

Ayyar and *Boddam*, *JJ.* in *Vangala Dikshatulu* v. *Vangala Gavamma* [1] refused to follow this decision and preferred to follow the earlier ones.

Service grants.

In the case of service inams, it is competent to Government to substitute a salary as remuneration for the service and resume the inam in its entirety, according as it may consist of the melwaram alone or of both melwaram and kudiwaram [2]. Regulation VI of 1831 was passed which precluded Civil Courts from taking cognizance of suits relating to service inams, and after the appointment of the Inam Commission in 1859, Act IV of 1866 was passed which exempted enfranchised service lands from the operation of Regulation VI of 1831.

Effect of enfranchisement

As regards the effect of the enfranchisement of service inams, there was a difference of opinion in the Madras High Court before the matter was settled by a Full Bench. The cases of *Bada* v. *Hussu Bhai* [3], *Venkatarayadu* v. *Venkata Ramayya* [4], *Dharnipragada* v. *Kadambari Virraazu* [5] and *Salemma* v. *Lutchmana Reddi* [6], proceeded on the footing that enfranchisement operated as a resumption and regrant, so as to convert it into an absolute estate in the hands of the grantee; while the cases of *Narayana* v. *Chengalamma* [7] and *Gunnaiyan* v. *Kamakshi Ayyar* [8] held that the only effect of the enfranchisement of service inams was to disannex the inam from the office by imposing a quit-rent and convert it into ordinary property and did not operate as a resumption and regrant nor altered the nature of the property in the hands of the grantee. The latter view was accepted by the Full Bench in *Lakshmipati* v. *Chalamayya* [9]. An enfranchisement in favour of the managing member of a joint Hindu family enures to the benefit of all the members[10]. The principles of these decisions have been held applicable

[1] 28 Mad. 13.

[2] *Per Bhashyam Ayyangar, J.* in *Gunnaiyan* v. *Kamakshi Ayyar*, 26 Mad. 339.

[3] 7 Mad. 236.

[4] 15 Mad. 284.

[5] 21 Mad. 47.

[6] 21 Mad. 100.

[7] 10 Mad. 1.

[8] 26 Mad. 339.

[9] 30 Mad. 434; *Yerranna* v. *Kannamma*, 21 M.L.J. 962; *Subbaraya Chetty* v. *Aiyasami Aiyar*, 32 Mad. 86.

[10] *Nanjundia* v. *Venkata Subbiah*, 27 M.L.J. 618.

to title deeds granted subsequent to the Act [1].

Alienation of inams.

As the enfranchisement of an inam does not operate as a resumption and regrant, and its only effect is to impose an assessment from which it was antecedently free, any mortgage [2] or sale [3] of a personal service inam before enfranchisement is valid. But a mortgage or sale of a village service inam is declared invalid by Regulation VI of 1831 and Act III of 1895. The alienee cannot take advantage of subsequent enfranchisement and claim the benefit of the Section 43 of the Transfer of Property Act [4]. The contrary, however, has been held in *Anganayya* v. *Daroor Narasanna* [5].

Position of an enfranchised inamdar.

The holder of an enfranchised inam holds his lands, subject to payment only of the quit-rent. His tenure is superior to that of a *ryotwari* holder in that he is protected from the periodical revision of assessment made by the Settlement department [6].

Position of the Inam Commissioner.

The Inam Commissioner is a deputy or agent of the Government for the purpose of the enfranchisement of inams [7], and is an officer fully empowered to investigate the rights of inamdars and to recognise on behalf of Government what rights are proved to exist in them [8]. He can sell the reversionary rights of the Crown in accordance with the rules made by Government [9], and his decision within the scope of his authority is binding upon it [10]. The presumption is that he did not transgress the rules made by the Government [11]. Any arrangement made between him and

[1] *Lachmana* v. *Geddanna*, 1 L.W. 329.

[2] *Vishnu Trimback* v. *Talia Punt*, 1 Bom.H.C.R.(A.C.J.) 22; *Ganpatrav Trimback Patwardhan* v. *Ganesh Baji Bhat*, 10 Bom. 112; *Hari Sadashiva* v. *Sheik Ajmudin*, 11 Bom. 235.

[3] *Yemani Sitarama Sastrulu* v. *Gora Ramudu*, (1911) 2 M,W.N. 588; *Yerranna* v. *Kannamma*, 21 M.L.J. 962.

[4] *Narahari Saha* v. *Sira Korithan Naidu*, (1913) M. W. N. 415.

[5] 18 M. L. J. 247.

[6] *Man of Adminis* I. 120.

[7] *Sobhanadri Appa Rao* v. *Gopalkristnamma*, 16 Mad. 34; *The Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268 (278).

[8] Per *Sadasiva Ayyar, J.* in *The Secretary of State* v. *Srinivasa chariar*, 15 M. L. T. 277.

[9] *Visappa* v. *Ramayogi*, 2 M.H.C.R. 341; *Lutchmee Dass* v. *The Secretary of State*, 32 Mad. 456.

[10] Per *Sadasiva Ayyar, J.* in *The Secretary of State* v. *Srinivasa Chariar*, 15 M. L. T. 277.

[11] *Lutchme Doss* v. *The Secretary of State*, 32 Mad. 456.

the zemindar will not affect the rights of inamdars [1]. His duties are in no way judicial. He has only to deal with those in possession of inams on terms varying with the nature of the holding [2] and it is not within the scope of his authority to determine the relationship between the melwaramdar and the kudiwaramdar [3].

---

[1] *Sobhanadri Appa Rao* v. *Gopalkristnamma*, 16 Mad. 34; *Suryanarayana* v. *Appa Rao*, 16 Mad. 40.

[2] *Visappa* v *Ramayogi*, 2 M. H. C. R. 341.

[3] *Rama Iyengar* v. *Jagannatha Pandiajiar*, 38 Mad. 155.

CHAPTER. X

OCCUPANCY AND NON-OCCUPANCY RYOTS.
(UNDER THE MADRAS ESTATES LAND ACT.)

Occupancy right is now claimed by ryots under the *Madras Estates Land Act* (I of 1908). Prior to the Act, it was conceded by zemindars in the south, while it was denied by those in the north, and the Act, therefore, makes a declaration of its existence in the ryot. The Act proceeds on the footing that his right to the land arises by possession and gives legislative sanction to the ancient Hindu Law doctrine that title to land arises by occupation. It also recognises the doctrine that the Government, and its assignee, the zemindar, is entitled only to the royal share or the melwaram, and not to the possession of cultivated lands. All lands in an estate are divided into three classes (1) *ryoti land*, (2) *old waste*, and (3) *private land*. This distinction is maintained throughout the Act to enable ryots to claim occupancy rights. Looking at the definitions of *ryoti land* given in Section 3 (16), of *old waste* in Section 3 (7), and of *private land* in Section 3 (10), and the provisions contained in Sections 6,23, and 25, it seems that *old waste* and *private land* come within the definition of *ryoti land* and are therefore different species of it. But *Sadasiva Ayyar, J.* has in *Raja of Venkatagiri* v. *Jayampu Ayyaparedda* [1] held that *old waste lands* are of two kinds (*a*) *old waste* which are *ryoti lands* and (*b*) *old waste* which are not *ryoti lands*. It has been held that *private land* is a species of *ryoti land* and therefore forms part of an estate [2]. The Estates Land Act.

Ryoti land is defined in Section 3 (16) to mean all cultivable land in an estate other than private land, but Ryoti land.

[1] 38 Mad. 738.
[2] *Zemindar of Chellapalli* v. *Rajalapati Somayya*, 27 M.L.J. 718.

not to include tank beds, communal lands, such as threshing floors, cattle-stands, village-sites, and lands granted on service tenure free of rent or on favourable rates of rent if granted before the passing of the Act, or free of rent if granted after that date, so long as the service tenure lasts [1]. Section 23 raises a presumption in favour of *ryoti land*, whenever a question arises whether any land is *old waste* or *ryoti land* other than *old waste*. Cultivable land has been held to mean land permanently cultivable and not land occasionally cultivated [2]. *Zeroity land* is *ryoti land* [3], but not pasture land *i.e.* land fit only for pasturing cattle and not for ploughing or raising agricultural crops [2].

Acquisition of occupancy right.

Section 6 (1) declares that every ryot who, at the date of the Act, is in possession of, or who, subsequent thereto, has been admitted to possession of, *ryoti land*, not being *old waste* situated in the estate of a land-holder, shall have a permanent right of occupancy in his holding, and the Section is declared not to affect any permanent right of occupancy acquired in land that was old waste before the commencement of the Act. Broadly speaking the Act does not confer upon the ryot an occupancy right, though often so called, in respect of lands in his possession, for it is presumably in him; and the Act only effects legislative recognition of the right. The explanation to the Section defines "every ryot now in possession" to mean "every person who having held land as a ryot continues in possession of such land at the commencement of this Act." The ryot can claim the benefit of this Section either because he holds a *ryoti land* in an estate, or because the person under whom he holds it is a land-holder as defined in the Act. And in order to get the benefit of Section 6, he must be in possession at the date of the coming into force of the Act. Where a decree for possession was obtained by the landlord against the tenant, but the latter remained in possession on the date of the coming into force of the Act,

[1] See *Idubilly Siyyaddi* v. *Raja Viswaswara Nissanka*, 18 M. L. T. 142.

[2] *Raja of Venkatagiri* v. *Jayampa Ayyaperedda*, 38 Mad. 738.

[3] *Narayanasami Naidu* v. *Venkayya*, (1910) M. W. N. 116; S. C. 282.

he will get the benefit of Section 6 (1) [1]. So also when a decree for ejectment was passed under the Rent Recovery Act against the tenant, and an appeal was pending against that decree when the Act came into force and he remained in possession [2]. Similarly also when the interest of the ryot in the land was purchased by the landlord for arrears of rent, but the former continued in possession[3]. In order to claim the benefit of the Section, he must be in actual possession of the land [4]. The ryot includes one in wrongful possession also[5]. The following persons have been held to be entitled to claim the benefit of Section 6 (1) as holding under a landholder:—a person holding under a cowledar from a proprietor [6]; a person let into possession by a grantee from the widow of a zemindar for the purpose of making waste lands cultivable[7]; a person holding under the owner of a portion of an estate, separated from it before the Act came into force [8]; a person claiming under an alienee of a portion of the annual melwaram right in the lands of a zemindar [9]; a person holding under one who got a lease with the right of leasing the land to others as well as of cultivating them himself from a person who derived his right from the zemindar [10]; a ryot let into possession by the receiver of an estate[11]. The benefit of Section 6 is also applicable to such portions of the holding of a tenant which have been added thereto by encroachment, provided that the tenant has been in possession for 12 years before the 1st of July 1908 when the Act came into

[1] *Govinda Parama Guruva* v. *Dandasi Pradhana*, 20 M. L. J. 528; (1910) M. W. N. 331.

[2] *Gorakala Kanakayya* v. *Janardhana Padhi*, 36 Mad 439, overruling *Raja of Venkatagiri* v. *Narasayya*, 37 Mad. 1; *Raja of Pittapur* v. *Anappindi Siva Ramayya*, 18 I. C. 534.

[3] *Sivapada Mudali* v. *Pitty Tyagaraja Chettiar*, 27 M. L. J. 665; *Markapulli Reddiar* v. *Thandava Kone*, (1914) M. W. N. 798.

[4] *Rangaswami Aiyyangar* v. *The District Board of Tanjore*, 21 M.L. J. 728.

[5] *Maharaja of Vizianagaram* v. *Maheswaram Ramabhadrayya*, 15 I. C. 397.

[6] *Tungmala Mallanna* v. *Ramaraju*, (1914) M. W. N. 345.

[7] *Brundavana Harish Chandra Jagadd Raja Bahadur* v. *Ramayya*, 26 M. L. J. 600; 1 L. W. 148

[8] *Chipurapalli Appayyn* v. *Kakarlapudi Ramachandra Raju Bahadur* 27 M. L. J. 490.

[9] *Kanti Venkanna* v. *Chelikani Rama Rao Garu*, 26 I. C. 510.

[10] *Vinjamuni Veera Venkayya* v. *Yenamurthi Veerabadrhdu*, 26 I. C. 735.

[11] *Narayanasami Naidu* v. *Subramanyam*, 29 M. L. J. 478.

force [1]. But a sub-lessee under a ryot cannot claim the benefit of Section 6, even though he was granted a patta direct by the zemindar [2].

Ryoti land remains as such.

The Act proceeds on the footing that the character of *ryoti land* can never be changed, and that it always retains it, and for the purpose of effectuating this object, the following provisions are made, (1) when land held by a ryot with permanent rights of occupancy is surrendered or abandoned, or comes into the possession of the landholder, and the latter admits any person to possession of such land within ten years of such surrender, abandonment, or coming into possession, the latter gets a permanent right of occupancy therein[3]; (2) an ijaradar or farmer of land cannot, as such, acquire, except by inheritance or devise, occupancy right therein[4]; but a ryot with a permanent right of occupancy does not lose his right by becoming subsequently interested in the land as landholder or holding it subsequently in ijara or farm [5]; (3) a person in whom the entire interests of the landholder and ryot in the land have become united, either before or after the commencement of the Act, must hold it only as a landholder and not as a ryot, without prejudice, however, to the rights of a third person [6]; (4) a person who is jointly interested in land as a landholder, and who has the occupancy right transferred to him, either before or after the commencement of the Act, holds it subject to the payment of rent to his co-landholders, and when he lets it to a third person, the latter gets a permanent right of occupancy in such land [7]; (5) a landholder to whom the interest of the ryot has, before the passing of the Act, passed by transfer for valuable consideration otherwise than at a sale for arrears of rent, or has passed by inheritance, has the right of admitting for the period of 12 years from the date of the Act any person to the possession

[1] *Brundavana Harischandra Jagad Raja Bahadur* v. *Jagannadha Singh Santo*, 2 L. W. 29.

[2] *In re Kakarapalli Pothu Raju*, 2 L. W. 270.

[3] *Section* 6 (2).

[4] *Section* 6 (6).

[5] *Explanation to Section* 6 (6).

[6] *Section* 8 (1); *Sivaramayya* v. *Chinna Muneappa*, 30 I. C. 812.

[7] *Section* 8 (2).

of the land on such terms as may be agreed upon between them, and the person so admitted cannot during such period claim the benefit of Section 46 [1]. Such land, however, does not become the private land of the landholder and the relations between him and his tenant during that period are regulated by contract [2]; and (6) when a ryot dies intestate in respect of an occupancy holding, and leaves no heirs except the Crown, his right of occupancy is extinguished, but the land still remains ryoti land [3].

Landholder's advantages.

Though the primary object of the Act is to give special privileges to the ryot, the landholder also gets some rights under it. They are, (1) a first charge for rent and interest thereon upon the holding, and upon the produce of the holding or any part thereof [4]; (2) a right to reserve mining rights on admitting any person to possession of ryoti land [5]; (3) a right to have improvements effected by him recorded [6]; and (4) a right to receive premium, when first admitting a person to possession of ryoti land [7].

Incidents of occupancy tenure.

The incidents of the occupancy tenure are,

Ejectment.

(1) The ryot cannot be ejected from his holding otherwise than in accordance with the provisions of the Act [8].

Transferability.

(2) His right is heritable, and transferable by sale, gift, or otherwise [9]. Therefore, notwithstanding any agreement to the contrary, entered into by the ryot before the Act, he is entitled to claim compensation in respect of his occupancy right, when the land is taken by Government under the Land Acquisition Act [10].

Use of the land.

(3) He may use the land in his holding in any manner which does not materially impair the value of the land and render it unfit for agricultural purposes[11]. A contract between the landholder and the ryot, or a usage

[1] *Section* 8 (4).
[2] *Veerappa Chetty* v. *Mudali*, 26 M. L. J. 373.
[3] *Section* 10 (2).
[4] *Section* 5.
[5] *Section* 7.
[6] *Section* 16.
[7] *Section* 25, paragraph 2.
[8] *Section* 9.
[9] *Section* 10 (1).
[10] *Hotha Virabhadrayya* v. *Revenue Divisional Officer, Polavaram*, 29 I. C. 8.
[11] *Section* 11.

which entitles the ryot to use the holding in a manner which might impair the value of the land for agricultural purposes, such as the erection of a skin godown or tannery, is not made inoperative by the Act [1].

Right to trees.

(4) He has a right to all trees which are planted by him after the passing of the Act, or which naturally grow upon the holding. As regards trees in his holding which were in existence before the Act, he has got a right to use, enjoy or cut them, subject to any right reserved to the landholder either by custom, or contract in writing executed by the ryot before the passing of the Act [2].

Improvements.

(5) He has a right to make improvements to his land. As between the landholder and the ryot desiring to make the same improvement, the latter has the preference, unless it affects the holding of another ryot under the same landholder, when the landholder has the preference [3]. When such improvement has been effected at the ryot's sole expense, he is not liable to pay additional rent on account of increased production, or of any change in the nature of the crop raised consequent on such improvement, notwithstanding any usage or contract to the contrary [4]. A difference of opinion arose between *Sadasiva Ayyar* and *Napier JJ.* [5] on the question whether the words "contract to the contrary" in Section 13 (3) had a retrospective operation, and whether the claim for a higher rate of rent for crops raised with the help of improvements made at the tenant's expense was sustainable, when they were effected before the Act came into force, and when there was a contract entered into between the landholder and the ryot before the passing of the Act for the payment of such enhanced rent. *Sadasiva Ayyar, J.* held that the Section was retrospective and the claim was not sustainable, while *Napier. J* held the contrary. On account of this difference of opinion, the matter was referred to a third Judge, *Kumaraswami Sastriar J*, who agreed with the view taked by *Napier, J.* [6]. This decision

[1] *Meera Kasim* v. *Foulkes*, 37 Mad. 432.

[2] *Section* 12.

[3] *Section* 13 (1) and (2).

[4] *Section* 13 (3).

[5] *Varadachariar* v. *Ramudu*, 28 M. L. J. 81.

[6] *Ibid.*

was subsequently followed by *Sadasiva Ayyar* and *Napier JJ*, [1]. Payments for over sixty years in *Varadachariar* v. *Ramudu* [2], and for forty years in *Lodd Govindoss* v. *Chinnappa Naidu*, [3] at a higher rate of rent for crops raised with improvements effected by the ryot at his sole expense were held sufficient to infer a contract supported by consideration for the payment at the higher rate. But a payment for seven years will not give rise to such an inference, unless there is consideration for that contract [4]. The landholder's non-charge of rent for the site occupied by a well is sufficient consideration for the contract [5]. However, such an implied contract cannot be raised in all cases [6]. And when the improvements have been effected by the ryot, the landholder has no right to charge rent at a higher rate on account of increased production [7]. A custom of paying enhanced rent, if wet crops are cultivated on dry lands without the help of improvements made by the tenant at his expense is not illegal [8].

Evidence of improvement.

(6) He has a right to have evidence of any improvement effected by him after the commencement of the Act recorded [9].

Temporary improvement.

(7) He is entitled to make temporary wells, water-channels, embankments, levellings, enclosures or other works or petty alterations or repairs to such works as are made in the ordinary course of cultivation [10].

Enhancement.

(8) The rent is not liable to enhancement except in the manner provided by the Act[11].

Putta.

(9) He has a right to call upon the landlord to issue a patta [12].

Exclusive possession of crops.

(10) He is entitled to the exclusive possession of the whole produce until it is divided, but has no right to remove any

[1] *Lodd Govindoss* v. *Chinnappa Naidu*, 28 M. L. J. 136.

[2] 28 M. L. J. 81.

[3] 28 M. L. J. 136.

[4] *Kosidoss Subbaroya* v. *Narayana Reddi*, (1915.) M. W.N. 209.

[5] *Lodd Govindoss* v. *Chinnappa Naidu*, 28 M. L. J. 136.

[6] *Arunachellam Chetty* v. *Syed Ahmed Ambalam*, 2 L. W. 1117.

[7] *Raghava Naidu* v. *Muthiyalu Naidu*, 28 M. L. J. 301; *Raja of Venkatagiri* v. *Shaikh Mohadeen*, 1 L. W. 592; *Kosidoss Subbaroya* v. *Narayana Reddi*, (1915) M.W.N. 209.

[8] *Muthu Chettiar* v. *Muthuswami Pillai*, 30 I. C. 486.

[9] *Section* 17.

[10] *Section* 18.

[11] *Section* 24.

[12] *Section* 50.

portion of it from the threshing floor before it is divided, and if he does, the produce will be deemed as full as the fullest crop on similar lands in the neighbourhood for that harvest. He is also entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landholder [1].

Repair of irrigation work.

(11) A ryot holding not less than a fourth of the rent of the ayacut under an irrigation work can apply to the District Collector to have it repaired [2].

Division of holding.

(12) He has a right to divide his holding and transfer the same [3]. He is not liable for rent after he has transferred his holding and given notice of the transfer to the landholder [4].

Relinquishment.

(13) He has the right of relinquishing his holding or part thereof, not being less than a revenue field, provided the land relinquished is accessible and the apportionment of rent thereon is made by the landholder, subject to revision by the Collector. In order to escape liability for the rent of the next revenue year, notice of such relinquishment must be given before the first day of April preceding, and the retained part is thereafter treated as a new holding [5]. This privilege of relinquishment is given only to occupancy and non-occupancy ryots, and not to ryots of old waste holding bound by a lease or other written agreement for a fixed period [6].

Payment of rent.

The ryot is bound to pay rent [7] in respect of all ryoti land in his occupation [8], and it is made a charge on the holding and the produce thereof [9]. The definition of rent does not require that the ryot in possession should actually use the land for the purpose of agriculture [10]. A custom to pay rent on the basis of the cultivated area in the holding is not illegal [11]. There are two presumptions raised in the Act as regards the rate of rent and the conditions of the tenancy

[1] *Section* 73.
[2] *Section* 135.
[3] *Section* 145.
[4] *Rangaramanuja Chariar* v. *Srinivasa Iyengar*, 26 M.L.J. 397.
[5] *Section* 149.
[6] *Ibid.*
[7] It includes *rusooms* for payment to karnams, *Peddi Redi* v. *Receiver, Nidadavole Estate*, 18 M.L.T. 171.
[8] *Section* 4.
[9] *Section* 5.
[10] *Appiaswamy* v. *Raja of Vizianagaram*, 25 M. L. J. 50.
[11] *Arunachalam Chetti* v. *Muthayaiyan Thevan*, 26 M.L. J. 575; See also *SeguRowther* v. *Muthu Alagappa Chetty*, 26 M. L. J. 269.

namely, (1) that the amount of rent and the conditions of the tenancy are the same as in the last preceding year[1], and (2) that the rate of rent lawfully payable by the ryot is fair and equitable[2]. He is bound to pay rent at the rate prevailing for similar lands in similar circumstances, and if it cannot be ascertained, at such rate as may be determined upon by the Collector[3]. He is bound to pay it, according to agreement or usage[4] at the village office of the landholder[5]. If it is not paid on the day it falls due, it becomes an arrear[6] carrying interest at the rate of six per cent per annum until it is liquidated[7]. He is entitled to a receipt for rent paid by him[8] in the form specified in Section 63[9].

Premium.

The landholder can collect premium at the time of letting the ryot into possession of ryoti land, but cannot, after such admission, demand any payment beyond the established rent by way of premium or other consideration[10].

Penalty for collecting illegal cesses.

The landholder cannot collect anything beyond the rent lawfully payable by the ryot[11], and if he does, is liable to pay a penalty not excceeding one hundred rupees, or double the value of amount or value when it exceeds one hundred rupees[12], in addition to the amount or value of what has been exacted, and all stipulations and reservations for such additional payment are rendered void[11].

Trespasser.

When a trespasser obtains possession of land without the consent of the landholder, he is liable to pay rent fixed upon the land, and if no such rent is fixed on it, at such rate as may be determined upon by the Collector, and also damages in a sum not exceeding the rent so fixed or determined[13]. But if the landholder receives rent from him and does not sue to eject him within two

[1] *Section* 27.

[2] *Section* 28; As to how the presumption is rebutted, see *Ayyamperumal Udayan* v. *Ramasami Chettiar*, 29 M.L.J. 362.

[3] *Section* 25.

[4] *Section* 59.

[5] *Section* 66.

[6] *Section* 60.

[7] *Section* 61.

[8] *Section* 62.

[9] As to the courses open to courts, when the title of the landholder to receive rent is denied by the ryot, see *Alaga Kudumban* v. *Sivarama Iyer*, 29 I. C. 31.

[10] *Section* 25, paragraph 2.

[11] *Section* 143.

[12] *Section* 144.

[13] *Section* 145.

years from the date of such receipt or first payment, he gets a permanent right of occupancy therein [1]. He may eject him in a suit before the Civil Court and recover the amount payable to him for rent[2].

Ejectment of occupancy ryots.

An occupancy ryot is not liable to ejectment, except on the ground that he has materially impaired the value of the holding for agricultural purposes and rendered it substantially unfit for such purposes, and in a suit for ejectment the landholder may claim compensation also [3]. If, in such a suit, the Court finds that the ryot is liable to ejectment, but the damage is capable of being repaired or can be compensated for in money, it may ask him to repair the damage or pay the compensation with one month or such other time as may be specified by it, and on default order him to be ejected [4]. Payment of compensation in lieu of ejectment does not sever the relationship of landlord and tenant between the parties, the compensation being only for the injury done to the landlord by the wrongful conversion, and not for the severance of the relationship [5]. But he cannot be ejected for denial of landlord's title [6].

Enhancement of rent.

There is a specific provision in the Act that the rent of a ryot is not liable to enhancement, except in the manner provided therein [7]. Waram rates are not liable to enhancement [8], and in all cases of enhancement, the rent must be fair and equitable and must not be beyond the value of the established waram [9]. The landholder can claim enhancement only in the following cases :—(1) When the land was let at a low rent for a term for the purpose of clearing and bringing waste lands into cultivation, or for the purpose of making any permanent improvement, or for planting, or for any premium or valuable consideration, and when the term has expired, or the terms upon which, and the

[1] *Section* 6 (2), *Explanation.*
[2] *Section* 163.
[3] *Section* 151 ; as to the circumstances to be taken into consideration in deciding the question, see *Rama Chetty* v. *Arunachallam Chettiar*, 18 M.L.T. 349.
[4] *Section* 152.
[5] *Sankaralingam Moopanar* v. *Subramania Pillai*, 29 M. L. J. 514.
[6] *Subramaniam Chettiar* v. *Periasami Thevar*, 26 M. L. J. 435 (437).
[7] *Section* 24.
[8] *Section* 29.
[9] *Section* 35.

purposes for which such lower rent was allowed are not substantially fulfilled; (2) when, after the lifetime of the land-holder, his successor seeks to enhance the rent on the ground that the land had been let on a low rent [1]; (3) and in the case of lands paying a money rent [2] when

(*a*) during the currency of the existing rent there has been a rise in the average price of the staple food-crops in the taluq or zemin division, if the rent is not permanently fixed, and the enhanced rent is not more than two annas in the rupee. The procedure to be followed by the Collector in such suits is laid down in Section 31. No such suit can be brought if within twenty years next preceding its institution, rent has been commuted, or enhanced, or a suit for enhancement has been dismissed on the merits [3].

(*b*) during the currency of the existing rent the productive powers of the soil have been increased by an improvement effected by the land-holder. The procedure to be followed by the Collector in such cases is laid down in Section 32.

(*c*) works of irrigation or other improvements have been effected by Government and the land-holder has been asked to pay an additional revenue therefor. The procedure to be followed by the Collector in such cases is laid down in Section 33, and

(*d*) the productive powers of the land have been increased by fluvial action. The procedure to be followed by the Collector is laid down in Section 34.

If, in cases (*a*), (*b*) and (*d*), the Collector thinks that immediate enforcement of the decree for enhancement will be attended with hardship to the ryot, he can direct gradual increase in a period not exceeding five years [4].

1 *Section* 26 (1) and (2).
2 *Section* 30.
3 *Section* 37.
4 *Section* 36.

A suit for enhancement of rent based on a contract entered into before the Act is enforceable. It is only when the land-holder wants to enhance the rent basing his claim on the general right conferred upon him by Section 32 that he must obtain the order of the Collector for such enhancement of rent before he can claim it [1]. An agreement to pay an enhanced rate of rent entered into before the Act came into force by a person who was a yearly tenant does not bind him after the Act came into force, as his status has been changed by the Act [2].

Reduction of rent.

The ryot may sue for the reduction of rent on the following grounds [3]:—(1) permanent deterioration of the soil without the fault of the ryot; (2) permanent failure of supply in the case of irrigated land, from the irrigation work on which it is dependent; and (3) fall in the average local prices of staple food crops, not due to temporary causes. When a decree has been passed in such a suit reducing the rent or dismissing it on the merits, no fresh suit can be brought within twenty years from the date of such decree [4].

Commutation of rent.

Whenever rent is paid, wholly or partly in kind, the ryot may sue before the Collector for commuting it into a money payment [5]. When it is thus commuted, it cannot either be enhanced for twenty years except on the ground of a subsequent alteration in the area of the holding, or on the ground of improvements effected by the land-holder, or by Government, or reduced for twenty years except on the ground of subsequent alteration of the area or of permanent deterioration of the soil or of permanent failure of supply from the irrigation source [6].

Pattas.

A ryot with a permanent right of occupancy, and a ryot of oldwaste holding under a land-holder otherwise than under a lease in writing, are entitled to demand pattas from the land-holder [7]. The contents of pattas are given in Section 51 (1); and Section 51 (2) expressly provides that any

[1] *Lessees of Sivaganga Zemindary* v. *Chidambaram Chetty*, 38 Mad. 524.

[2] *Raja of Pittapuram* v. *Venkata Subba Rao*, (1915) M. W. N. 813.

[3] *Section* 38; see *Nallalya Koundar* v. *Sadaya Koundar*, (1915) M. W. N. 791.

[4] *Section* 39.

[5] *Section* 40; *Venkanna* v. *Receiver, Medur Estate*, 1 L. W. 245.

[6] *Section* 41.

[7] *Section* 50 (1) and (2).

stipulation in restraint of cultivation or harvesting by a ryot, or for the giving up of possession of land by an occupancy ryot at any specified time is void and of no effect. Pattas and muchalikas cannot be obtained as a matter of right for more than one revenue year, though they can be exchanged for more than one year [1]. Section 52 applies only to pattas and muchalikas exchanged since the Act came into force, and no retrospective effect can be given to that Section so as to bring within its operation pattas and muchalikas executed under the Rent Recovery Act, and tenable for a year only [2]. Under the repealed Rent Recovery Act no proceedings could be taken, unless there was exchange of pattas and muchalikas, or a tender of pattas which the ryot was bound to accept. This provision has been taken away in the Estates Land Act which provides that pattas and muchlaikas are necessary only when the land-holder wants to proceed against the ryot by distraint and sale of his moveable property, or by sale of his holding [3]. Therefore a suit for rent is maintainable without the exchange of patta and muchalika [4], and the same principle applies to suits for rent that had accrued due for faslis before the coming into force of the Act, when they were brought after the date of its commencement [5]. Another change effected by the new Act is the provision that a patta which is not entirely, but only partially, correct, is enforceable to the extent to which it is found correct [6], and thus it sets at rest the conflict of decisions passed under the Rent Recovery Act. Where a patta is served by affixture to the house and not to the land of the ryot, it is not proper tender, and distraint and sale taken under it are invalid [7].

[1] *Section* 52 (1).

[2] *Raja of Pittapuram* v. *Venkata Subba Rao*, (1915) M. W. N. 813.

[3] *Section* 53 (1) ; *Perraju Garu* v. *Subbarayudu* (1911) 2 M. W. N. 251.

[4] *Veerabadraraju Garu* v. *Ganta Kumari Naidu*, 22 M. L. J. 451.

[5] *Kanthimathinatha Pillai* v. *Muthuswami Pillai*, 37 Mad 540 ; *Veerabadra Raju* v. *Ganta Kumari Naidu*, 22 M. L. J. 451 ; *Muthiah Chettiar* v. *Ramasami Chettiar*, (1913) M. W. N. 618 ; *President, District Board, Tanjore* v. *Muthuvera Ambalagaran*, 24 I.C. 722; *Raja of Karvetnagar* v. *Pandur Govinda Mudaliar*, 27 M. L. J. 238 ; *Muthukumara Chetty* v. *Anthony Udayan*, 38 Mad. 867.

[6] *Section* 53 (2) : *Raghunatha Rao* v. *Vellamoonji Gaundan*, 27 M.L.J. 597.

[7] *Zemindar of Sivagiri* v. *Michael*, 38 Mad 629 ; *Kolakudi Veeranna Reddi* v. *Vasudeva Reddi*, 17 M.L.T. 85.

Non-occupancy ryots.

Non-occupancy ryots:—*Non-occupancy* ryots dealt with by the Act are (1) ryots admitted to the occupation of waste on such terms as may be agreed upon between them and the land-holder [1]; (2) ryots admitted to waste lands under a contract for the pasturage of cattle and to land reserved *bona fide* by the land-holder for forest under a contract for the temporary cultivation thereof [2]; (3) ryots admitted to possession of land reclaimed by the land-holder by his own servants or hired labour, for thirty years from such reclamation [3]; and (4) ryots admitted to possession of lands which had come into the possession of the land-holder, either by transfer or valuable consideration before the passing of the Act, otherwise than at a sale for arrears of rent, or by inheritance, [4] for twelve years from the passing of the Act. A contract between a ryot of old waste and the land-holder, whether made before or after the commencement of the Act, restricting his right to acquire the status of an occupancy ryot is void [5].

Their rights.

A non-occupancy ryot is entitled (1) in due course of husbandry to reclaim, clear, enclose, level, terrace, or remove silt from his holding, and to construct, maintain, and repair a well for the irrigation of the holding with all works incidental thereto, but not to make other improvements without the permission of the land-holder [6]; and (2) to call upon the land-holder to confer upon him occupancy right on payment of a sum equal to two and a half times the annual rent payable in respect of the land together with the cost of preparing any instrument required for that purpose [7].

Ejectment of non-occupancy ryots.

He can be ejected only on any of the following grounds [8], (1) that he has used the land in a manner which renders it unfit for the purposes of the tenancy; (2) that a decree for arrears of rent in respect of the holding passed against him or any person whose legal representative remains unsatisfied at the expiry of the revenue year following the one in which the decree was passed; (3) that he has refused to pay a

1 *Section* 6 (3).
2 *Section* 6 (4).
3 *Section* 6 (5).
4 *Section* 8 (4).
5 *Section* 188.
6 *Section* 14.
7 *Section* 46.
8 *Section* 153.

fair and equitable rent determined under Section 49; (4) that, without the permission of the land-holder, he has mined or quarried or excavated gravel or clay for profit within his holding; or (5) that he has been admitted to occupation of the land under a registered lease for a term exceeding five years and that the term of the lease has expired. Section 153 (b) provides that a non-occupancy ryot can be ejected on the ground of the expiry of the term of the lease granted before the Act. The grounds of ejectment specified in Section 153 apply only to non-occupancy ryots under the Act and not to non-occupancy ryots before the Act who have since acquired rights of occupancy by virtue of Section 6 (1) [1].

Old Waste.

Old waste is thus defined in Section 2 (7):—"*Old waste* means and includes any land in an estate which, not being private land, (1) has at the time of letting by the land-holder been owned and possessed by him and his predecessor in title for a continuous period of not less than ten years and has continuously remained uncultivated during the time, such period being either after or partly before or partly after the commencement of this Act, or within twenty years before the passing of this Act, or (2) has at the time of any letting by the land-holder after the passing of this Act, remained without any occupancy right being held therein at any time within a continuous period of not less than ten years immediately prior to such letting, and includes ryoti land in respect of which before the passing of this Act, the land-holder has obtained a final decree of a competent Civil Court establishing that the ryot has no occupancy right, and so long as no right of occupancy has been acquired subsequent to the date of such decree" [2]. The ryot of *old waste* comes under the category of *non-occupancy* ryots, and therefore all the provisions governing them apply to ryots of *old waste* also.

Enhancement of rent.

Section 47 provides that the rent of a ryot of *old waste* can be enhanced only when (1) it is not fixed by an agreement in writing; (2) the tenancy is one from year to year; and (3) he holds over after the expiry of the year. Section 49 enacts

[1] *Raja Velugoti Muthu Krishna Yachindra Bahadur* v. *Raju Chetty*, (1914) M. W. N. 496.

[2] As regards the onus of proving *old waste*, see *Sarvarayudu* v. *Venkatarayudu*, 38 Mad. 459; as to what it is, see *Venkatratnam* v. *Varadaraja Appa Rao*, 28 M. L. J. 184.

that in case of his failure to agree to the enhanced rate, he is liable to ejectment and Section 154 provides for compensation for improvements made by him before ejectment. The grounds of ejectment are the same as in the case of a non-occupancy ryot [1]. In *Atchaparaju* v. *Raja Velugoti Krishnaya Chendraluvaru* [2], it was held that a ryot of *old waste* cannot be ejected on the ground of the expiry of the lease granted to him before the Act came into force. This decision was doubted by *Spencer*, *J.* in *Ponnusami Padayachi* v. *Karuppudayan* [3] and was dissented from by *Oldfield* and *Tyabji*, *JJ.* in *Venkataratnam* v. *Varadaraja Appa Rao* [4].

Compensation to ryots.

Where a ryot, whether occupancy or non-occupancy, has before the date of ejectment sown or planted crops on the land, he is at the option of the land-holder, entitled either (1) to remain in possession of the land for the purpose of tending and gathering in the crops, or to receive compensation for the estimated value of the labour and capital spent by the ryot, or (2) when he has only prepared the land for sowing, but has not sown or planted crops on that land, to receive the estimated value of the labour and capital spent by him; but not to remain in possession or receive any compensation, if he has cultivated or prepared the land contrary to local usage [5]; and when he is allowed to remain in possession, he must pay for such use and occupation rent at which the holding was held [6].

Private land.

Private land is defined by Section 3 (10) to mean the domain or homefarm land of a land-holder, by whatever designation known, such as kambattam, khas, sir, or pannai. Section 19 provides that, except as provided in the Act, the relations between the land-holder and the tenant of his private land are not regulated by the provisions of the Act. A suit for the ejectment of such a tenant can be brought only in a Civil Court [7]. The tenant of private land has no right of occupancy, nor

1 *Section* 157.
2 38 Mad. 163.
3 38 Mad. 843.
4 29 M. L. J. 184.
5 *Section* 155.
6 *Section* 156.
7 *Sreeramulu* v. *Rangayya Appa Rao*, 23 M. L. J. 241; *Atchaparaju* v. *Raja Velugoti Krishnayachendraluvaru*, 38 Mad. 163.

can he ask the land-holder to confer on him that right. But there is nothing to prevent the land-holder from converting his *private land* into *ryoti land*. Section 8 does not retrospectively impose an absolute prohibition of the conversion of *ryoti land* into *private land* before the Act, and actual conversion of *ryoti land* into *private land* must be established by clear and satisfactory evidence [1]. The Local Government, either of itself or on the application of a land-holder[2], may ascertain and record his private land [3]. When any question arises as to whether any land is *private land* or not, it is to be presumed to be *ryoti land* and, if it has been cultivated as private land for twelve years before the date of the commencement of the Act, it is to be presumed as *private land*, and in deciding questions of *private land* regard must be had to custom and to the fact whether the land was before the 1st day of July 1898 specifically let as *private land* and to any other evidence that may be produced [4]. The merger of occupancy rights under sub-sections 1 and 2 of Section 8 does not convert *ryoti land* into *private land* [5]; nor merger under sub-section (4) of that Section [6].

When a tenant of private land has no saleable interest therein and the rent is in arrears at the end of the revenue year and there is no sufficient distress to satisfy the demand, the land-holder can apply to the Collector to enter upon and take possession of the premises, which is to be effected in the manner provided for by Sections 159 and 160. The defaulter's right and interest in them cease on such delivery of possession, if he does not bring a suit in the Civil Court to set aside those proceedings. The landholder can also, when pattas and muchalikas have been exchanged between him and the tenant, proceed by way of distraint and sale

Remedies aganist tenants of private land.

[1] *Zemindar of Chellapalli* v *Rajelapati Somayya*, 28 M. L. J. 718.

[2] *Section* 182

[3] *Section* 183.

[4] *Section* 185; *Chintam Reddi Sanyasi* v. *Sri Raja Sagi Appala Narasimha Raji Garu* (1914) M. W. N 766; *Zemindar of Chellapalli* v. *Rajalapati Somayya*, 28 M. L. J. 718.

[5] *Section* 8 (3).

[6] *Veerappa Chetti* v. *Mudali*, 26 M. L. J. 373; affirmed on Letters Patent Appeal by *Oldfield* and *Seshagiri Ayyar, JJ*; *Sivaramayya* v. *Muneappa*, 30 I. C. 812.

of the moveable property of the defaulter for arrears due to him.

Communal lands.

Communal lands, such as threshing floors, cattle-stands, village sites and other lands in any estate which are set apart for the common use of the villagers cannot be used or assigned for any other purpose by the land-holder without the written order of the Collector, subject to such rules as may be made by the Local Government in this behalf [1], and any land set apart by the land-holder for such purposes after the permanent settlement reverts to him if it is not, in the opinion of the Collector, required for any communal purposes [2]. Any person occupying communal land is liable to be ejected in a suit before the Collector under the provisions of the Madras Land Encroachment Act (III of 1905) within thirty years from the date of such occupancy [3], and the provisions of Sections 10 to 14, of that Act dealing with appeals from the order of Collector are made applicable to orders by the Collector in such cases [4]. In the case of communal land not forming part of an estate under Section 3 (2), a landlord is entitled to evict tenants let by him into possession, even if it is classed as village site [5].

Jurisdiction of Civil Courts.

Section 189 of the Madras Estates Land Act ousts the jurisdiction of Civil Courts in respect of suits and applications specified in Parts A and B of the schedule to the Act, and vests it in the Collector or other Revenue officer specially authorised to deal with them. The Act, however, does not apply to suits pending on the date it came into force [6]; nor to suits for damages for cultivating lands without permission instituted before the Act came into force, even though the trial has to be commenced after it came into operation [7]; and the right of distraint which a land-holder can exercise before the Act came into force is not affected

[1] *Section* 20.
[2] *Ibid* explanation.
[3] *Section* 21.
[4] *Section* 22.
[5] *Chilamakurti Naganna* v. *Kavipurapu Rama Rao*, 28 I. C. 836.
[6] *Subraya Mudaliar* v. *Rakki*, 32 Mad 140; *Archakan* v. *Kallur Venkata Reddi*, 14 I. C. 329.
[7] *Narayanasamy Naidu* v. *Kanuru Ramayya*, (1914) M. W.N. 713; 870.

by it [1]. A suit to set aside a sale for arrears of rent on the ground of fraud [2]; a suit by a zemindar for a declaration that a patta executed by a previous zemindar is invalid [3]; a suit for a declaration that a sale held for arrears of rent is void on the ground that the sale proclamation was issued after 45 days of service of intention to sell given under Section 115 of the Act [4]; a suit for vari or tax payable in respect of trees [5]; a suit for kattubadi by a zemindar against an inamdar [6]; a suit for ejectment of tenants of private land [7]; suits between a ryot and tenants under him [8], are cognizable by Civil Courts.

Holder of an estate.

The jurisdiction of Civil Courts is ousted, if either the land in respect of which the suit is brought is situated in an "estate", or the holder thereof is a "land-holder" as defined in the Act. In discussing what an "estate" is, it will be convenient to deal separately with the classes of estates dealt with in Section 3, sub-Section 2 (*a*), (*b*), (*c*) and (*e*), and Section 3, sub-Section 2 (*d*). The former comprises (1) a permanently settled estate or temporarily settled zemindary; (2) any portion of such permanently settled estate or temporarily settled zemindary; (3) any unsettled palayam or jagir; and (4) any portion consisting of one or more villages or any of the estates mentioned above which is held on a permanent under-tenure. A grant of waste land by a zemindar to which Section 11 of the Rent Recovery Act applied, which was recognised by Government as a minor estate, is not an "estate" within the meaning of the definition [9].

1 *Parasurama Goundan* v. *Lodd Govindass Krishna Dass*, 16 I. C. 903.

2 *Gouse Moideen* v. *Muthialu Chettiar*, 26 M.L.J. 36: (1914) M.W. N. 55.

3 *Venkata Kumara Mahipati Surya Rao Bahadur* v. *Sreerama Charyulu*, (1911) 2 M.W.N. 307.

4 *Chidambaram Pillai* v. *Muthammal*, 1 L. W. 414.

5 *Murugappa Chettiar* v. *Ramanathan Chettiar*, 1 L.W. 881.

6 *Narayanasamy Naidu* v. *Venkatasubbarayudu*, (1911) 1 M. W. N. 233; *Madapathi Venkateswara Rao* v. *Nandun Rajagopalan*, 30 I. C. 927.

7 *Sreeramulu* v, *Rangayya Appa Rao*, 23 M. L. J. 241; *Atchaparaju* v. *Krishnayachendralu*, 38 Mad. 163.

8 *Section 19*; per *Wallis C. J.* in *Chirupalli Appayya* v. *Ramachendra Razu*, 27 M. L. J. 400 (492); *Zemindar of Chellapalli* v. *Rajalapati Somayya*, 27 M. L. J. 718 (721); Cf. In re *Kakarapali Pothuraju*, 2 L. W. 270.

9 *The Baptist Missionary Society* v. *Ratnakaro Patro*, (1911) 2 M. W. N. 517.

In *Chirupalli Appayya* v. *Ramachendra Razu* [1], there was a grant of certain lands in a village by a zemindar of an "estate" in exchange for certain inam lands. *Sir John Wallis, C. J.* was of opinion that they were not part of an "estate" as defined in the Act, while *Seshagiri Ayyar, J.* was of opinion that they did not cease to be part of the "estate."

Inams.

The second class of estates is with reference to inams. An inam is an "estate" when the land revenue alone of a village has been granted to a person not owning the kudiwaram, provided that the grant has been confirmed or recognised by the British Government, and a minor inam is not, therefore, an estate within this definition. The exception to Section 8 introduces a provision in favour of the inamdar that, where before or after the commencement of the Act the kudiwaram interest in the land is acquired by him, such land ceases to be part of an estate. A resumed jagir is not an "estate", and a suit for rent for lands therein can be brought in a Civil Court [2]. The Act does not apply to a suit for rent of certain lands in a village granted as inam but not the whole village [3], nor of lands belonging to a mosque claimed by one under a permanent lease from one of the inamdars [4], nor of inams carved out of the zemindary before the permanent settlement and not included in its assets [5].

Presumption of inamdar being the owner of kudiwaram.

To render the Act applicable, the inam must have been granted to a person not owning the kudiwaram. It has already been explained that an inam grant is *prima facie* only a grant of land revenue, whether it was granted by Government or the zemindar before or after the permanent settlement, and that the same presumption applies to minor inams also [6]. But is there any presumption that it was granted to a person not owning the kudiwaram? The decisions are conflicting on the point.

[1] 27 M. L. J. 490.
[2] *Vungarala Seshayya* v. *Tadapalli Subba Row*, 25 I.C. 61.
[3] *Mohanambal* v. *Davoodosa Rowther*, 23 I.C. 859; *Muniappa Reddi* v. *Subba Row*, I L.W. 585.
[4] *Muthuswamy Pillai* v. *Jafer Hussain Khan*, 14 I.C. 215.
[5] *Tondikonda Buchi Virabadrayya* v. *Sonti Venkanna*, 24 M.L.J 659; *Sanyasi Naidu* v. *Agnihotram Venkatacharyulu*, 26 M L.J. 258.
[6] *Ante*, Chapter VI. pp. 96, 97.

In some cases [1] it was held that the *onus* was on the tenant to show that the kudiwaram was not vested in the land-holder, and in the absence of any admission or proof on the part of the latter that he did not own the kudiwaram, Civil Courts had jurisdiction to entertain suits for rent; while in other cases [2] the contrary has been held that, unless the land-holder proved that he was the owner of the kudiwaram, Civil Courts had no jurisdiction. It has also been held that there is a presumption, especially in the case of grants made to Brahmans, that they were not to persons owning the kudiwaram [3]. But these decisions overlook the fact that generally, whenever such grants were made, the kudiwaram interest was also purchased if the state was not already possessed of it, and made over to the grantee.

Meaning of "acquired."

The exception to Section 8 states that, when the kudiwaram interest in the land is acquired by the land-holder, such land ceases to be part of the estate. The decisions are not agreed as to the meaning of the word "acquired." Mr. *Justice Miller* in *Ponnuswamy Padayachi* v. *Karuppudayan* [4] and *Mr. Justice Spencer* in *Suryanarayana* v. *Potanna* [5] held that acquisition of the kudiwaram interest by surrender or abandonment was a mode of acquisition contemplated by the exception to Section 8, and that it was not restricted to the modes specified in sub-sections 1 and 4 to Section 8; while *Mr. Justice Sadasiva Ayyar* in *Suryanarayana* v. *Potanna* [6] and *Venkata Sastrulu* v. *Sitaramudu* [7]

[1] *Chinna Nagudu* v. *Venkatasubbayya*, (1910) M. W. N. 639; *Marapu Tharalu* v. *Velukulu Nilakanta Behara*, 30 Mad. 502; *Arunachala Sastry* v. *Krishna Sastry*, 9 M. L. T. 360; *Jagannathacharyulu* v. *Kutumbarayadu*, 27 M. L. J. 233; *Papi Reddi* v. *Peda Venkata Charyulu*, 27 M. L. J. 567.

[2] *Yerrayya* v. *Kangili Naidu*, 34 Mad 246; *Bhadrayya* v. *Bapayya*, 21 M.L J. 803; *Lakshmi Narasimha Appa Rao* v. *Sitaramaswami*, 24 M. L J. 288; *Venkata Narasimha Appa Rao* v. *Subba Reddi*, 24 M.L.J. 655; *Narasimha Charyulu* v. *Ramabrahmam*, 24 M.L.J. 656; *Suryanarayana* v. *Potanna*, 38 Mad. 608: 26 M.L.J. 99: 15 M.L.T. 268.

[3] *Lakshmi Narsimha Rao* v. *Sitaramaswami*, 24 M. L. J. 288; *Venkata Narasimha Appa Rao* v. *Subba Reddy*, 24 M.L.J. 655; *Narasimha Charyulu* v. *Ramabrahmam*, 24 M.L.J. 656; *Venkata Sastrulu* v. *Sitaramudu*, 38 Mad. 891; *Visvanadha Rao* v. *Chinna Kolandai Nainar*, 1 L. W. 197.

[4] 38 Mad. 843.

[5] 38 Mad. 608.

[6] *Ibid.*

[7] 38 Mad. 891.

and *Mr. Justice Seshagiri Ayyar* in the last case [1] and in *Zemindar of Chellapalli* v. *Rajalapati Somayya* [2] took a contrary view; the latter Judge, however, holding that surrender will be a mode of acquisition, if the inamdar had exercised dominion over the property and added it on to his estate.

Jurisdiction over waste in inams.

The inamdar's right over waste has been discussed [3]. Has the Civil Court got jurisdiction over waste in an inam? Where, at the time of the grant, all the lands granted either as a major or minor inam are waste, the presumption is the kudiwaram in them also was granted and therefore a suit in respect thereof can be brought in a Civil Court [4]. But where certain lands only are waste at the time of the grant and bear a small proportion to the cultivated lands, do they still form part of an estate? The decisions are not uniform on this matter. In *Lakshmi Narasimha Rao* v. *Sitaramasami* [5] it was held by *Sundara Ayyar* and *Sadasiva Ayyar*, JJ. that, where lands were waste at the time of the grant, the presumption was that the kudiwaram interest also was granted to the inamdars and that suits in respect thereof could be brought in a Civil Court; the same view was taken by *Miller, J.* in *Ponnuswamy Padayachi* v. *Karuppudayan* [6]. In *Venkata Sastrulu* v. *Sitaramudu* [7], *Sadasiva Ayyar*, J. appears to have modified the view taken by him in *Lakshmi Narasimha Rao* v. *Sitaramasami* [5] by holding that, though waste lands could be said in a sense to belong to the land-holder, he did not own the kudiwaram rights therein, unless he had converted them into his private lands by cultivating them as such before the coming into force of the Act, and that, if this had not been done, Civil Courts had no jurisdiction in respect of such lands. The same view was taken by *Spencer*, J. in *Suryananarayana* v. *Potanna* [7]; *Seshagiri Ayyar, J.* in *Venkata Sastrulu* v. *Sitaramudu* [8] in coming to the conclusion that Civil Courts

[1] *Venkata Sastrulu* v. *Sitaramudu*, 38 Mad. 891.
[2] 27 M. L. J. 718 (727).
[3] *Ante*, Chapter VI. p. 97.
[4] *Venkata Sastrulu* v. *Sitaramudu*, 38 Mad. 891 *Vegoti Chengiah* v. *Putto Ramudu*, (1914) M. W. N. 367.
[5] 24 M. L. J. 288.
[6] 38 Mad. 843.
[7] 38 Mad. 891.
[8] 38 Mad 608.

had no jurisdiction proceeded on the footing that the waste did not under the grant cease to be part of an estate.

In respect of lands held under a land-holder.

Even when the lands are not in an "estate" as defined in the Act, the Act applies if the holder thereof is a "land-holder" within the meaning of the Act. A land-holder is defined to mean "a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent court or of any provision of law" [1]. Therefore the word "land-holder" is wider than the holder of an estate [2]. The grantee from the widow of a zemindar [3]; the owner of a portion of an estate, not forming part of it, whether such severance was made before or after the coming into force of the Act [4]; the alienee in perpetuity of the annual melwaram of a portion of the annual melwaram right in the lands of a zemindar [5]; a person who got a lease with the right of leasing the lands to others as well as cultivating them himself from a person who derived his title from a zemindar [6], a cowledar from a proprietor [7]; the receiver of an estate [8], are land-holders and they cannot bring suits before Civil Courts. So also are an inamdar to whom certain lands in a village are granted in inam [2]; and a zemindar who purchased from the agraharamdars an inam village carved out of the zemindary [9].

---

[1] *Section* 3(5).

[2] *Appala Narasimhulu* v. *Sanyasi*, 38 Mad. 33.

[3] *Brundavanachandra Horishchandra Jagadd Raja Bahadur* v. *Ramayya*, 26 M.L.J. 600.

[4] *ChipiruPalli Appayya* v. *Rama-Chendra Razu*, 27 M.L.J. 490.

[5] *Kanti Venkanna* v. *Chelikani Rama Rao Garu*, 26 I.C. 510.

[6] *Vinjamuri Veera Venkayya* v. *Yenamurthi Veerabhadrudu*, 26 I. C. 735.

[7] *Tungala Mallanna* v. *Gottu Mukkaza Ramaraju*, (1914) M.W.N 345.

[8] *Narayanasami Naidu* v. *Subramanyam*, 29 M. L. J. 478.

[9] *Narayanasami Naidu* v. *Gangha-daram*, 15 I. C. 784.

CHAPTER XI.

LEASES AND THEIR INCIDENTS.

Lease.

A lease of immoveable property is a transfer of a right to enjoy such property for a certain time, express or implied, or in perpetuity, in consideration of a premium, or of rent which may consist of money, a share of crops, or any other thing of value to be rendered periodically, or on specified occasions to the lessor by the lessee [1]. A lease may thus be in perpetuity, for life, for a term of years, or from year to year.

Permanent lease.

Where a lease is expressly granted to be in perpetuity, no difficulty arises; but when nothing is known about its duration, certain presumptions are called into aid to determine it. It is open to Courts to infer permanent tenancy from long possesion at an unvarying rent and each case must be determined on its own merits. Where the origin of the tenancy is known, mere possession, however long, will not confer a permanent right [2], and in such cases, it is not for the landlord to explain the possession but for the tenant to show that his holding leads to the inference of a permanent tenure[3]. Where the origin of the tenany is not known, length of possession [4], transfer of the tenant's interest to the

1 *Section* 105. T. P. A.

2 *Vasadeva Patrudu* v. *The Zemindar of Salur*, 3 M.H.C.R. 1; *Srinivasa Chetti* v. *Nanjunda Chetti*, 4 Mad, 174; *Thiagaraja* v. *GiyanaSambhanda Pandara Sannadhi*, 11 Mad. 77 ; *Linga Reddi* v. *Venkata Krishna Rao*, 21 M. L. J. 166 (34 years) ; *Bai Ganga* v. *Dullabh Parag*, 5 Bom. H.C.R. (A.C.J.)179 (30 years); *Endar Lalla* v. *Lalla Hari*, 7 Bom .H.C.R. (A. C. J) 111 (30 years) ; *Narayan Visajiv*v. *LakshmananBapuji*,10Bom. H.C.R.324 (more than 3 generations); *Narayan Bhat* v. *Davlata*, 15 Bom. 647 (70 years); *Kalidas Laldas* v. *Bhoji Narans*. 16Bom.646 (40 years); *Secretary of State* v. *Luchmeswar Singh*, 16 Cal. 223 : 16 I. A. 66.

3 *Secretary of State* v. *Luchmeswar Singh*, 16 Cal. 223: 16 I.A. 466.

4 *Daulat* v. *Sakharam Gangadhar*. 14 Bom. 392; *Audi Thevan* v. *Palani Thevan*, 16 I. C. 702; *Palaniand Malavarayan* v. *Vadamalai Oodayani* 2. L. W. 723.

knowledge of the landlord[1], or recognition of such transfer by him [2], will lead to the inference of permanent tenancy. But permanency of tenure is not inconsistent with the absence of fixity of rent; they are distinct, and the latter may be the subject of agreement without touching the former [3].

Leases for building purposes.

Permanent tenancy may also be inferred when the tenancy is made for building purposes [4]; but the mere fact that a lease of land is made for dwelling purposes does not make it permanent, unless there is something to show that the building was intended to be or was in fact a masonry building [5], and where the origin of the tenancy is not known nor is there any evidence as to its terms nor as to who built the house, the mere possession by the tenant for any length of time will not make it permanent [6]. Where, the origin of the tenancy is known, the mere erection of permanent structures upon the land let to the tenant to the knowledge of, and without any intervention by, his lessor will not make the tenancy permanent [7].

Other evidence showing permanency.

In the absence of words conveying a permanent right, the permanency of the tenure can be established by the other terms of the instrument, the circumstances under which it was granted, or the subsequent conduct of the parties which show with reasonable certainty that the grant was

[1] *Visvanadha Rao* v. *Chinnakolandi Nainar*, I L. W. 197; *Rango Lall Lohea* v. *Wilson*, 26 Cal. 204; *Janaki Nath Chowdhry* v. *Kali Narain Lal Chowdry*, 37 Cal. 662; *Haridas Tanti* v. *Upendra Narain Shaha*, 22 C. L. J. 75.

[2] *Upendra Krishna Mandal* v. *Ismail Khan Mahomed*, 32 Cal 41: 31. I. A. 144; *Niratan Mandal* v. *Ismail Khan Mahomed*, 32 Cal. 51. 31, I. A. 149; *Naba Kumari Debi* v. *Behari Lal Sen*, 34. Cal. 102; *Neman Chandra Bose* v. *Mahomed Basir*, 9 C. L. J. 475.

[3] *Raja Bahadur Raghunatha Savant* v. *Babu Lakshuman Tandel*, 2 Bom L. R. 13.

[4] *Govinda Chandara Sikdar* v. *Ajinubiddin Sha Biswas*, 11 C. L. R, 281; *Binode Beharee Roy* v. *Masseyk*, 15 W. R. 493; *Juhoree Lall Sohoo* v. *Dear*, 23 W. R 399; *Rungo Lal Lohea* v. *Wilson*, 26 Cal. 204; *Ismail Khan Mahomed* v. *Jaigun Bibi*, 27 Cal. 570; *Promoda Nath Roy* v. *Sorigobind Chowdhry*, 32 Cal. 648; per *Sundara Ayyar J.* in *Savadamuthu Asari* v. *Revd Mesquita*, (1914) M.W. N. 67; *Navaham* v. *Javerilal*, 7 Bom. L. R. 401.

[5] *Barada Prosad* v. *Prasanna Kumar*, 16 C. W. N. 564.

[6] *Prosunno Coomaree Debea Shaiku Rutton Behary*, 3 Cal. 696.

[7] *Beni Ram* v. *Kunda Lal*, 21 All. 496: 26 I.A. 58; *Janaki Nath Chowdhry* v. *Kali Narain Roy Chowdhry*, 37 Cal. 662.

intended to be perpetual [1], by evidence of long and uninterrupted enjoyment and of the descent from father to son [2] or by other evidence [3] to that effect.

Right under the lease.

A forfeiture clause does not in any way affect the permanency of the tenure [4], nor does a renewal clause necessarily import perpetuity [5]. Where a permanent and hereditary tenure is granted, the grantor has no interest in the lands granted, unless he has reserved to himself a right of re-entry or reversion, and in the absence of such a clause, the Crown takes the lands by escheat on failure of the heirs of the grantee [6]. A permanent lease including all rights of various kinds with the exception only of the homestead includes the minerals [7]. Where the whole of a village except a specified portion is granted on a mokurari lease, and the rights of the grantor in the village are expressly demised to the grantee and his sons and grandsons, on payment of a rent fixed in perpetuity, though there was a clause forfeiting the lease for non-payment of rent, it was held to convey to the lessee title to the underground minerals even if neither party had any idea at the time of the execution of the lease of the existence of coal underneath or contemplated the working of the minerals [4]. When a grantor received to himself the right to underground coal and limestone, he is entitled to ingress and egress upon the property demised for the purpose of

[1] *Rajaram* v. *Narasinga*, 15 Mad. 199; *Foulkes* v. *Muthusawmy Goundan*, 21 Mad. 503; *Venkataramanna* v. *Venkatapathi Nayani*, 28 M.L.J. 310; *Bilamoni Dasi* v. *Raja Sheoprasad Singh*, 8 Cal. 664 : 9 I.A. 33; *Tulshi Persad Singh* v. *Ram Narain Singh*, 12 Cal. 117; *Agin Bindh Upadya* v. *Mohun Bitram Singh*. 30 Cal. 20; *Narasingh Dyal Sâhu* v. *Ram Narain Singh*, 30 Cal. 883; *Gaya* v. *Ramjiwan Singh*, 8 All. 569; *Baboo GopalLalThakoor* v. *Taluck Chunder Rai*, 10 M. I. A. 183.

[2] *Raja Suttosurrun Gopal* v. *Moheschunder Mitter*, 12 M.I.A. 263; *Kuroonakur Mahotee* v. *Nedadro Chowdry*, 14 W.R. 107; *Nabo Doorga Dossia* v. *Dwarka Nath Roy*, 24 W. R. 301; *Dean Dyal Singh* v. *Heera Singh*, 2 N. W. P. 338.

[3] *Foulkes* v. *Rajarathna Mudali*, 6 M. H. C. R. 175; *Venkataramanna* v. *Venkatapathi Nayani*, 28 M.L. J. 310 : *Ganga Bai* v. *Kalapa Darir Mukriya*, 9 Bom. 419.

[4] *Megh Lal Pandey* v. *Raj Kumar Thakur*, 34 Cal. 358.

[5] *The Secretary of State* v. *Forbes*, 16 C. L.J. 217.

[6] *Sonet Koer* v. *Himmut Bahadur*, I Cal. 391: 3 I.A. 92, affirming *Himmut Bahadur* v. *Sonet Kooer*, 15 W. R. 549; *Nil Madhab Sikdar* v. *Nartotam Sikdar*, 17 Cal. 826.

[7] *Syama Charan Nandy* v. *Abhiram Goswami*, 33 Cal. 511; reversed on another point by the Privy Council in *Abhiram Goswami* v. *Shyama Charan Nandy*, 36 Cal. 1003: 36 I.A. 148.

reasonably working the coal and metals which are reserved under the lease doing no more damage to the surface than is absolutely necessary and protecting the lessee's right to support in case any excavations are made [1]. He has the right not only to go upon the land and work the minerals known to be under-ground, but also to go on the land to conduct the ordinary preliminary operations by boring or otherwise, to ascertain if the minerals are underground [2]. In the absence of any provision in the lease authorising him to work the minerals, a permanent tenant [3], or a tenant for life [4], or years [5] is not entitled to open mines; neither is he entitled to cut or remove trees existing at the date of the grant [6].

Term of years.

A lease for a term of years is not determined either by the death of the lessor [7], or the lessee [8] before the expiry of the term, in the absence of any provision to that effect, and his heirs are entitled to the unexpired portion of the term, and any interference with their possession after the lessor's or lessee's death will entitle them to get damages [9]. The reason for the rule is thus stated by the Privy Council[10]. "The *prima facie* meaning then is the continuance for seven years, and had there been an intention on the part of the grantor to have fixed any limitation, he ought to have done so by the insertion of qualifying words. Had such been the intention of the parties, nothing could have been easier than to have added, 'provided the grantee so long lives.' And if the party having full power

[1] *Gandoo Mahata* v. *Nilmonee Singh Deo Bahadur*, 1 C. L. J. 526.

[2] *Rameswar Malia* v. *Ram Nath Bhattacharjee*, 33 Cal. 462.

[3] *Jyoti Prasad Singh* v. *Lachipur Coal Co.* 38 Cal. 845.

[4] *Prince Mahomed Buktyar Shah* v. *Rani Dhojamani*, 2 C. L. J. 20; *Tituram Mukerji* v. *Cohen*, 33 Cal. 203: 32 I. A. 185; *Christian* v. *Tekaitini Nurbada Kunwari*, 9 C.L. J. 421.

[5] *Jyoti Prasad Singh* v. *Lachipur Coal Co*, 38 Cal. 845; In re *Purmanandas Jeewandas*, 7 Bom. 109.

[6] *Gangamma* v. *Bhommakka*, 33 Mad. 253; *Latifa Bibi* v. *Narayana Chari*, 17 M. L. T. 202.

[7] *Badrinath* v. *Bhajan Lal*, 5 All. 191.

[8] *Maharaja Tejchand Bahadur* v. *Sri Kanth Ghose*, 3 M.I.A 261: 6 W. R. (P.C.) 8 48; *Raja Burdakanath Roy* v. *Aluk Munjoore Dasiah*, 4 M. I. A. 321; *Shaik Danoollah* v. *Shaik Amanutollah*, 16 W. R. 147; *Gobind Lal Roy* v. *Hamendra Narain Roy Chowdhry*, 17 Cal. 686; *Hedlot* v. *Mahommad Shah*, 15 C. L. J. 241; *Khitish Chundur* v. *Bhikar*, 19 C. L. J. 448.

[9] *Maharaja Tejchand* v. *Sri Kanth Ghose*, 3 M.I.A. 261: 6 W.R. (P.C.) 48; *Raja Burdakanth Roy* v. *Alik Munjooree Dasiah*, 4 M. I. A. 32.

[10] *Maharaja Tejchand Bahadur* v. *Sori Kanth Ghose*, 3 M. I. A. 261 (273).

to engraft qualification omits to do so, the general principle of law would be opposed to any implied presumption."

Year to year.

A tenancy from year to year is a holding under a contract, expressed or implied, that the tenant may hold until the end of any year entered on, unless the tenancy shall be determined either by agreement of both the parties or by notice to quit by either party [1]. It is therefore a continuing tenancy so long as the parties are satisfied; and though determinable at the option of either party at the end of the year, it is not *ipso facto* terminated at the end of the year [2]. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes is deemed to be a lease from year to year [3], and is determinable only on a six months' notice expiring with the end of the year of the tenancy [4]. But a lease of immoveable property for other purposes is deemed to be a lease from month to month, terminable on the part of either the lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy [5].

At will.

A tenancy at will is a holding by a tenant entirely dependent on the will of the landlord, capable of being terminated at any time by the will and demand of the landlord without any express notice, and for the refusal to deliver up possession, ejectment may be at once brought [1].

Registration.

Section 17 (*d*) of the Registration Act requires that all documents of leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent must be registered, and Section 2 (7) defines a lease to include a counter-part, kabuliat, an undertaking to cultivate and an agreement to lease. Thus lease and agreement to lease are placed on the same footing as regards the necessity for registration. The proviso to Section 17 (*d*) empowers the Local Government to exempt from the operation of the Section any leases executed in a district or part

[1] *Abdulla Rowthen* v. *Subbarayyar*, 2 Mad, 346.

[2] *Maloddee Noshyo* v. *Bullubee Kant Dhur*, 13 W.R. 190.

[3] *Section* 106, T.P.A.

[4] *Ibid.*

[5] *Ibid.*

of it, the terms of which do not exceed five years and the annual rents reserved do not exceed fifty rupees. Under the Registration Act, therefore, there can be an oral lease for any length of time, since the Act requires registration only if it is in writing. A more stringent rule is laid down in Section 107 of the Transfer of Property Act which enacts that all leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument, and that other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. The Local Government is empowered to direct that all leases of immoveable property other than those first mentioned above may be made either by a registered instrument or by an oral agreement without delivery of possession. Section 4 of the Transfer of Property Act declares that the provisions contained in it should be read as supplemental to the Registration Act and the effect of this Section is therefore to add to the first sentence of Section 17 (*d*) of the Registration Act words to the following effect "And all instruments referred to in Section 107 of the Transfer of Property Act [1]." But the proviso to Section 17 (*d*) of the Registration Act must be limited to cases not falling under Section 107 of the Transfer of Property Act which absolutely requires the registration of all leases referred to therein [2], and an instrument which is referred to in Section 107 of the Transfer of Property Act and which is not thereby made compulsorily registrable does not require registration because it falls within the definition of lease given in Section 2 of the Registration Act [3]. The registered instrument which under Section 107 of the Transfer of Property Act is necessary to create a lease, need not be signed by the lessor [4].

1 *Sobhanadri* v. *Muthu Rangayya*, 32 Mad. 532; *Syed Agam Saheb* v. *Anantanarayana Iyer*, 35 Mad. 95; see also *Virananda Nadar* v. *Miyako Rowther*, 21 Mad. 109.

2 *Virananda Nadar* v. *Miyako Rowter*, 21 Mad. 109; *Sobhanadri* v. *Muthu Rangayya*, 32 Mad. 532.

3 *Sobhanadri* v, *Muthu Rangayya*, 32 Mad. 532.

4 *Syed Agam Saheb* v. *Anantanarayana. Iyer*, 35 Mad. 95: overruling *Tiraf Saheb* v. *Esuf Sahib*, 30 Mad. 322; *Somayya* v. *Khatya Begam Sahiba*, 1 L.W. 236.

It may be created by a registered instrument signed by the lessee and accepted by the lessor [1]. The proviso to Section 17 (*d*) is not restricted to rents payable in money alone but includes rent payable is grain; and the *onus* of proving that it did not exceed Rs. 50 is on the person who claims exemption under the proviso [2].

Construction of the Registration Act.

The Indian Registration Act which imposes serious disqualification for the non-observance of registration must be construed strictly, and it must be shown that the document comes within the four corners of the Act [3]. The criterion of registration is what is expressed on the face of the instrument [4], and so far as leases are concerned, the question is one of time and not of value. Where according to the law of the foreign state in which a promissory note is executed its registration is necessary, no suit can be brought on it in British India where registration is not compulsory, as it is the *lex loci contractus* that determines the validity of a contract made in a foreign state [5].

Registrable documents.

A lease of immoveable property for the life of the lessee is a lease for a term exceeding one year and therefore requires registration [6]; so also is a document which embodies an agreement for reduction in the amount of rent under a previously existing registered lease [7]. Similarly also a lease of the melwaram right for a future year, if the value of the interest is of Rs. 100 and upwards [8]. A document containing recitals of past facts does not require registration [9]; so also when the document contemplates the execution of

[1] *Syed Agam Saheb* v. *Anantanarayana Iyer*, 35 Mad. 95.

[2] *Sakki Reddy Appalaswamy* v. *Pakkurti Venkataswamy Naidu*, (1912) M.W.N. 918.

[3] *Amjed Ali* v. *Ala Bakhsh*, 9 W.R. 537; *Jiwan Ali Beg* v. *Basa Mad*, 9 All. 108.

[4] *Ramaswamy Iyer* v. *Tirupath Naick*, 27 Mad. 43; *Rohinee Debee* v. *Shib Chunder Chatterjea*, 15 W. R. 558.

[5] *Palaniappa Chetti* v. *Periakaruppan Chetti*, 17 Mad. 262.

[6] *Parshotam Vishnu* v. *Nana Prayag*, 18 Bom. 101.

[7] *Durga Prasad Singh* v. *Rajendra Narain Bagchi*, 37 Cal. 293; reversed on another point by the Privy Council, but affirmed on this point, *Durga Prasad Singh* v. *Rajendra NarainBogchi*, 41 Cal. 493: 40 I.A. 223; *Lalit Mohan Ghosh* v. *Gopal Coal Company Ltd.*, 39 Cal. 284; *Ganedra Mohun Chowdhury*, 16 I.C. 52; contra, *Obai Goundan* v. *Ramalinga Ayyar*, 22 Mad. 217; *Satyesh Chunder Sircar* v. *Dhunpul Singh*, 24 Cal. 20.

[8] *Mangalashami* v. *Subbiah Pillay* 20 M. L. J. 966.

[9] *Seetharama Raju* v. *Bayamam. Pantulu*, 17 Mad. 275; *Rama Ratani Chuckerbutty* v. *Inaneesh Chandra Batta Charya*, 12 C. W. N. 675.

another formal document [1] but not when it operates as a present demise[2]. A lease for one year to remain in force until another is executed or with an option of renewal with a rent of less than Rs. 50 does not require registration [3]. In such cases the term of the lease may no doubt continue beyond five years in the event of neither party determining it in the meanwhile, but as either party may determine it before five years, it cannot be said to be a lease for a term exceeding five years [4]. In order to exempt a lease from registration it is not necessary that an annual rent should be reserved. The proviso simply means that if an annual rent is reserved, it should not exceed Rs. 50. Therefore a lease for three years having a consolidated rent of Rs. 56—4—0 and ten bundles of betel leaves payable in one lump sum about the middle of the term is not compulsorily registrable [5].

Consequences of non-registration.

Section 49 of the Registration Act provides that no document which is compulsorily registrable, and which is not registered, shall affect any immoveable property comprised therein or be received in evidence of any transaction affecting such property. The first question that arises is, whether a document which was not required to be registered at the time when it was executed, can be used in evidence at the time, when it is sought to be admitted in evidence, it is required to be registered. In some early cases, it was held that admissibility being a matter of procedure, it was governed by the law then in force [6]. The other cases have held that such a course would have the effect of rendering invalid documents which were valid when they

[1] *Haji Abdul Vindone Jonas* v. *Hagi Harone Esmile*, 7 Ben. L. R. Ap. 21.

[2] *Purmanandas* v. *Jiwandas Dharsey Vviji*, 10 Bom. 101.

[3] *Virammal* v. *Kasturi Rangayyangar*, 4 Mad. 381; *Ratnasapathi* v. *Venkatachallam*, 14 Mad. 171; *Murugesa Chetti* v. *Chinnathambi Goundan* 24 Mad. 421; *Ramaswamy Iyer* v. *Tirupati Naick*, 27 Mad. 43; *Venkatasami Chetti* v. *Suppa Pillai*, 34 Mad. 90; *Apu Badgavla* v. *Narhari Annojee*, 3 Bom 21; *Jagjivandas Jadherdas* v. *Narayan*, 8 Bom. 493; *Benin Menahim Yousaf* v. *Johon Peteologo*, 8 Bom. L.R. 580; *Boyd* v. *Kreig*, 17 Cal. 548; *Khayahi* v. *Hossain Bakhsh*, 8 All. 198.

[4] *Ramasawmy Iyer* v. *Tirupati Naick*, 27 Mad. 43.

[5] *Venkatasami Chetti* v. *Suppa Pillai*, 34 Mad. 90, reversing *Venkatasami Chetty* v. *Suppa Pillai*, 33 Mad. 216.

[6] *Guduri Jaggannadham* v. *Rapaka Ramanna*, 7 M. H C. R. 348; *Raju Balu* v. *Krishnarav*, 2 Bom. 273; *Lachman Das* v. *Dip Chand*, 2 All. 851; *Khuda Bakhsh* v. *Sheo Din*, 8 All. 405.

were executed and therefore their admissibility depended on the law in force at the time of their execution [1]. A verbal lease for more than one year is valid for one year if it is accompanied by delivery of possession [2]. In *Raja of Venkatagiri* v. *Narayani Reddi* [3] it was held by a Full Bench of the Madras High Court that, in a suit for damages for breach of contract to execute a lease, the kabuliat executed by the lessee under which he was put in possession was admissible to prove the contract. This case has been held by another Full Bench of the same Court as being only an authority for the proposition that the kabuliat was admissible to prove the *karar* or agreement to lease which preceded it, and therefore it was held that an agreement to lease which was compulsorily registrable could not be received in evidence in a suit for specific performance of that agreement, and that it was immaterial whether possession passed under it or not; [4] nor is an unregistered lease admissible to prove a prior agreement [5]; nor is it admissible to prove an obligation contained therein to perform some services in connection with the land, when the obligation was the condition of the tenancy [6]. An unregistered lease is not admissible to prove the nature of possession which the lessee had [7]. A person occupying land under a lease inadmissible for want of registration is a trespasser and is liable in damages to the real owner [8]. It is not open to a purchaser of immoveable property to eject a tenant who is in possession under an agreement to lease for a fixed term which he can specifically enforce, if the purchaser had

[1] *Imrit Singh* v. *Koyhlashoo Koer*, 11 W. R. 559; *Hur Chunder Ghose* v. *Wooma Soorduree Dassee*, 13 W.R. 170; *Ram Coomar Singh* v. *Krishari*, 9 Cal. 68; *Desai Matilal Mangalji* v. *Desai Paroshotam Nandal*, 18 Bom. 92; *Intizam Fatima* v, *Ali Baksh*, 8 A. L. J. 609.

[2] *Mohomed Mossa* v. *Joganund Singh*, 20 I. C. 715.

[3] 17 Mad. 456.

[4] *Narayanan Chetti* v. *Muthiah Servai*, 35 Mad. 63; overruling *Konduru Srinivasa Charyulu* v. *Gattumukkala Venkataraja*, 17 M.L.J. 218; and dissenting from *Satyendra Nath Bose* v. *Anil Chandra Ghosh*, 14 C. W.N. 65.

[5] *Vasudeva Reddi* v. *Nallapa Reddi*, 1.L.W. 296.

[6] *Kanduri Venkata Seshayya* v, *Adam Saib*, 25 I.C. 166.

[7] *Subbaraju* v' *Muddullatchah*.17 M.L J. 469; *Yuruva Venkata Reddy* v. *Maddi Veeranna*, 15 M.L.T. 192, dissenting from *Thakore Fatesingji* v. *Dalal*, 27 Bom. 515; *Lalla Gopee Chand* v. *Shaik Liakut*, 25 *W. R.* 211.

[8] *Mangalasamy* v. *Subbiah Pillay*, 20 M.L.J.966.

notice of the terms of the tenancy and he or his predecessor in title had accepted rent from the tenant on such footing [1].

Agricultural leases.

Section 117 of the Tranfer of Property Act exempts all leases for agricultural purposes from the operation of Chapter V (Of leases of immoveable property), and power is given to the Local Government with the previous sanction of the Governor-General in Council to extend all or any of the provisions of the Chapter together with, or subject to those of, the local law. Agriculture and agricultural purposes are described by *Bhashyam Ayyangar, J.* in *Murugesa Chetti* v. *Chinnathambi Goundan* [2] thus: "The primary meaning of agriculture is the cultivation of the ground, and in its general sense, it is the cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock. Its less general and more ordinary signification is the cultivation with the plough and in large areas in order to raise food for man and beast or, in other words, 'that species of cultivation which is intended to raise grain and other field crops for man and beast.' Horticulture, which denotes the cultivation of gardens or orchards, is a species of agriculture in its primary and more general sense. In Section 117 of the Transfer of Property Act the word 'agriculture' is, in my opinion, used in its more general sense as comprehending the raising of vegetables, fruits and other garden products as food for man and beast, though some of them may be regarded in England as products of horticulture as distinguished from agriculture.' A reference to Section 106 which deals with all leases of immoveable property and in which the same expression 'agricultural purpose' occurs, would clearly show that the Legislature could not have intended that the word 'agriculture' was to be understood as excluding a large class of leases of garden lands in this country some or many of which in England may perhaps be regarded as horticultural.........A lease

[1] *Canniah Chetty* v. *Elamunda Chetty*, 2 L.W. 152.

[2] 24 Mad. 421.

of land as a yard for ploughing-cattle, or as a habitation for agriculturists or as pasture for ploughing cattle, or for the purpose of storing manure or growing plants to be used as manure for agriculture, will be a lease for agricultural purposes. Is it to be supposed that, if such a lease were given in connection wholly or partly with the cultivation of vegetable or fruit gardens and orchards, Section 117 is not to apply to it? The distinction between agriculture when it is used otherwise than in its ordinary and more general sense and horticulture is a fine one even in England and in India, especially, it will be impossible in the case of several products of the land to draw a line between agriculture and horticulture according to English notions. The only practical distinction which I can suggest and one which will give effect to the policy of the Legislature in exempting agricultural leases from the operation of Section 107 etc., of the Transfer of Property Act is to regard as agriculture, as distinguished from horticulture, not only all field cultivation by tillage but also all garden cultivation for the purpose chiefly of procuring vegetables or fruits as food for man or beast and other product fit for human consumption by way of luxury, if not an article of diet." *Shephard J.* who agreed with *Bhashyam Ayyangar J.* observed, "The term agriculture, however, is capable of being applied to tillage of the soil in the widest sense and after considering the context in which the expression 'agricultural purposes' is used in the Transfer of Property Act, *viz*, in sections 37,106 and 108, I cannot say that it was intended to limit its denotation in any way." A lease of a betel garden is a lease for agricultural purposes [1]. In *Kunhayen Haji* v. *Mayan* [2] it was held that a lease of a coffee garden was not a lease for agricultural purposes, and *Shephard J*, who was a party to both decisions said in the former case that his decision in the latter case was wrong. A lease of a plot for building purposes and for establishing a coal depot is not a lease for agricultural purposes [3]; so also a

[1] *Murugesa Chetti* v. *Chinnathambi Goundan*, 24 Mad. 421.

[2] 17 Mad. 98.

[3] *Raniganj Coal Association* v. *Judoonath*, 19 Cal. 489.

patni lease in Bengal since it is generally granted to a middleman with a view to his sub-letting, which he generally does and it is not the patnidar but his tenants who take the land for agricultural purposes [1]; similarly also a lease of a tank which does not appertain to an agricultural holding, but is used only for the preservation and rearing of fish [2].

When leases begin to operate. Present possession not necessary.

Ordinarily a lease takes effect from the date of execution, unless a contrary intention appears from the instrument of lease. But the fact that the tenancy is expressed to commence at a future day or is made to commence upon the determination of a prior lease for years under which another lessee is in possession does not affect its validity [3]. An agreement to execute a lease or the execution of a lease itself by a person who is out of possession, and who is litigating or intending to litigate for possession with the help of a person who has taken or agreed to take the lease is not illegal and may be enforced in India, even though the transaction is champertous [4]. No rent can be recovered under a lease of immoveable property knowingly made to a prostitute for the purpose of carrying on her avocations there [5].

Lease for immoral purposes.

Duty to disclose.

The lessor is bound to disclose to the lessee any material defect in the property with reference to its intended use, of which the former is, and the latter is not, aware and which the latter cannot with ordinary care discover [6]. Before the Transfer of Property Act, it was held in a case where the plaintiff hired a thatched bangalow of the defendant and after living there for some time lit a fire in a fireplace in one of the rooms and the chimney took fire as it was in an incomplete state and was not built so as to admit the vent of the chimney passing through the roof and therefore the plaintiff's furniture were destroyed, that he was entitled

[1] *Promotho Nath* v. *Kali Prasanna*, 28 Cal. 744.

[2] *Mahananda* v. *Mangala*, 31 Cal. 937.

[3] *Pitchakutti Chetti* v. *Kamala Nayakkan*, 1 M. H. C. R. 153.

[4] *Chidambara Chetty* v. *Runga-Krishna Muthu Vira Puchaiya Naiker*, 1 I. A. 241 : 22 W. R. 148; *Abdool Hakim* v. *Doorga Proshad Banerjee*, 5 Cal. 4.

[5] *Goureenath Mookerjee* v. *Modhoomonee Peshakur* 18 W.R. 445.

[6] *Section*, 108 (a) T. P. A.

to recover damages from the defendant [1]. Where, however, an upper storey was let to the defendant as a godown and the stipulation was that no combustible, or hazardous goods were to be stored therein and the upper storey came down as a result of the defendant storing loaded casks of white and red lead, and it was not shown that he loaded an unreasonable or improper quantity of such lead, it was held that he was not liable for damages caused to the plaintiff [2].

Delivery of possession.

The lessor is bound to give possession of the property to the lessee[3]. If the former fails to deliver possession, the latter is not bound to pay rent [4]. Where, however, the lessor does not put the lessee in possession, but there is no obstruction or likelihood of an obstruction to the lessee taking possession of the property and he neither tries nor requests the lessor to put him in possession of it, it was held he was liable for rent [5]. The lessee may, in case the lessor does not give him possession, bring a suit for ejectment against the party in possession by virtue of the lease granted to him [6], but is not bound to do so. Therefore, where the demisor of a kanom was unable to give possession of the property demised to the kanomdar, it was held that the latter was entitled to repudiate it and recover back the amount paid by him [7]. A landlord is not entitled to sue for possession of lands taken possession of by third parties, when there was an outstanding term in a lessee on the date of suit [8], and a suit for recovery of possession by the lessor is maintainable if the lessee is a party to the suit

[1] *Radha Kishen* v. *O.' Flaherty* 12 W. R. 145.

[2] *Koegler and Co.* v. *Yule and Co* 14 W. R. 45 (O. C.)

[3] *Section* 108 (b) T. P. A. ; *Donzelli* v. *Rajah Tek Narain Singh*, 2 W. R. (Act X) 103.

[4] *Bullen* v. *Lalit Jha*, 3 Ben. L. R. Ap. 119 ; *Hurish Chunder Koondoo* v. *Mohinee Mohun Mitter*, 9 W. R. 582 ; *Kali Doss Banerji* v. *Nubean Chunder Chatterjee*, 24 W. R. 91.

[5] *Narayanasamy Naidu* v. *Ramakrishnayya*, 33 Mad. 499.

[6] *Achayya* v. *Hanumantrayudu*, 14 Mad. 269 ; *The Zemindar of Vizianagaram* v. *Suryanarayana Pantrulu*, 25 Mad. 587 ; *Prankrishna Day* v. *Biswambhar Sen*, 2 Ben. L.R. (A.C.) 207 ; *Munee Dutt Singh* v. *Campbell*, 12 W. R. 149 ; *Bhutia Dhondu* v. *Ambo*, 13 Bom. 294.

[7] *Moidin Kutti Ayissa* v. *Valia Raja*, 2 M.H.C.R. 315.

[8] *Krishna Nambudri* v. *The Secretary of State* 19 M.L.J. 347.

and does not object[1]. Where the lessee not having been put into possession sued on the covenant by the lessor that in case of possession not being given, he would make good "everything in the shape of loss" to which the lessee might be put in consequence and measured his damages by the expense he had to incur in the suit for possession and also the whole of the profits he expected to derive from the lease, it was held that he was entitled only to nominal damages [2].

Covenant for quiet enjoyment.

The lessor is bound not only to give possession to the lessee but is further bound to see that his possession is not interfered with during the period of the lease [3]. This duty on his part is known as the covenant for quiet enjoyment. Even before the Transfer of Property Act and afterwards in cases not coming under it, it was held that in every lease there was an implied covenant for quiet enjoyment [4], the covenant thus implied being what is known as the qualified covenant under the English law whereby "the lessor is under an implied obligation to indemnify the tenant against ouster or disturbance in his possession by his own act or by the acts of those who claim under or have paramount right to him, but not against the wrongful acts of third parties" [5]. The same covenant is implied in an agricultural lease which is not governed by the Transfer of Property Act [6]. In *Tayawa* v. *Gurshidappa* [7] it was pointed out that the words "without interruption" in Section 108 (c) of the Transfer of Property Act enlarged the law before and introduced what is known as the unqualified covenant under the English

[1] *Raj Kishore Awasti* v. *Jadu Nath Basak*, 11 C.W.N. 828.

[2] *Khaja Mahomed Isa Khan* v. *Baboo Kisho*, 6 Ben. L. R. ap. 44.

[3] *Section* 108 (c) T. P. A.

[4] *Munee Dutt Singh* v. *William Campbell*, 11 W. R. 278, affirmed on review in *Munee Datt Singh* v. *William Campbell*, 12 W. R. 149; *Gopanund Jha* v. *Lalla Gobind*, 12 W. R. 109; *Kadumbinee Dossia* v. *Kasheanath Biswas*, 13 W. R. 338; *Kristo Soondur Sandyal* v. *Koomar Chunder Nath Roy*, 15 W. R. 230; *Ashrufoonissa Begum* v. *Sheik Tosudduck Hossein*, 22 W. R. 260; *Vithilinga Padayachi* v. *Vithilinga Mudali*, 15 Mad. 111; *Tayawa* v *Gurshidappa*, 25 Bom. 269.

[5] *Benjamin Douzelle* v *Girdharee. Singh*, 23 W. R. 121; *Vithilinga Padayachi* v. *Vithilinga Mudali*, 15 Mad. 111 (121); *Tayawa* v *Gursihdappa*, 25 Bom 269.

[6] *Srinivasa Iyengar* v. *Rangaswamy Iyengar*, 1 L.W. 858.

[7] 25 Bom. 269.

law and that therefore the lessee was protected against interruption from any person whatsoever.

Eviction by title paramount.

Eviction by a person claiming under a title paramount causes suspension of rent [1]. The mere fact that the tenant was compelled by the superior tenure-holder to execute a lease to him does not absolve the tenant from the liability to pay rent to the inferior tenure-holder from whom he orginally got possession [2]. If the eviction be due to the trespass of a third party, the lessee is not excused from the liability to pay rent, as in such a case, he is entitled to recover possession and damages from the trespasser. [3] Payment of rent, therefore, to a trespasser will not excuse the tenant from paying it to his landlord [4]. But, according to the decision in *Tayawa* v. *Gurshiddappa* [5], trespass even by stranger will cause suspension of rent in leases coming under the Transfer of Property Act. Where the interruption was due to the tortious acts of third parties, and it appeared that the lessor had failed by his remissness to do that which he alone could have done to protect his lessee in possession, even independently of any protective clause in the lease, it was held that he could not claim rent from the lessee in respect of the other part of the property from which the latter had been evicted [6]. When lands were taken under the provisions of the Land Acquisition Act, the tenant need not pay rent in respect thereof [7]. But in a case decided in Bombay apart from the provisions of the Transfer of Property Act,

Trespass by a stranger.

[1] *Brojonath Paul Chowdhry* v. *Heera Laul Paul*, 10 W. R. 120; *Gobind Chund Juttee* v. *Mun Mohun Jha*, 14 W.R. 43; *Benjamin Douzalle v. Girdharee Singh*, 23 W.R. 121; *Bullen v. Lalit Jha*, 3 Ben. L. R. ap. 119 ; *Rash Mohinee* v. *Nagar Chandrapal Chaudhuri*, 27 I.C. 265; *Tayawa* v. *Gurshidappa*, 25 Bom. 269.

[2] *Chunder Nath Bhuttacharjee* v. *Juggut Chunder Bhutta Charjee*, 22 W.R 337.

[3] *Rung Lall Singh* v. *Lalla Roodur Pershad*, 17 W. R. 386; *Chunder Nath Bhuttacharjee* v. *Juggut Chunder Bhuttacharjee*, 22 W.R. 337; *Benjamin Douzelle* v. *Girdharee Singh*, 23 W. R. 121; *Tarini Mohun Mozumdar* v. *Gunga Prosad Chuckerbutty*, 14 Cal. 649; *Kali Prasanna Khamalish* v. *Mathura Nath Sen*, 34 Cal. 191; *Srinivasa Iyangar* v. *Rungasami Iyengar*, 1 L. W. 858.

[4] *Tarini Mohun Mozumdar* v. *Gunga Prusad Chuckerbutty*, 14 Cal. 649 ; *Sarbananda Basu* v. *Pran Sankar Roy Chowdhuri*, 15 Cal. 527, *Abyayessari Debi* v. *Shidhessari Debi*, 16 Cal. 513.

[5] 25 Bom. 269.

[6] *Wajed Ali* v. *Mussamut Chundrabuttykoeree*, 22 W. R. 542.

[7] *Uma Sankar Sirteh* v. *Tarifini Chunder Singh*, 9 Cal. 571; *Watson and Co* v. *Nistarini Gupta*, 10 Cal. 544.

it was held that, though a covenant for quiet enjoyment could be presumed, it did not extend to acts of the Legislature whereby the use of the premises was prohibited by the plague authorities and that the lessee was bound to pay rent and could not sue for damages for breach of the implied covenant [1].

Eviction by lessor.

Where the lessee is evicted by the lessor, the former need not pay the rent [2]. But mere trespass on his part does not cause suspension of rent; and in order to constitute suspension, there must be something of a graver character interfering substantially with the enjoyment by the tenant of the property demised to him [3]. This is so even when the lessee has been ousted by a third party to whom the lessor granted a lease of the property and the lessee has obtained a decree for mesne profits against the third party for the period of dispossession [4].

Eviction from part.

Where the lessee is ousted from the entire property, there is no doubt that the entire rent is suspended. But when he is ousted from a portion of the property, the law was laid down by *Sir Barnes Peacock* thus, "According to English law, 'If the lands demised be evicted from the tenant, or recovered by a title paramount, the lessee is discharged from the payment of the rent from the time of such eviction' and if he is from part, the rent is to be diminished in proportion to the land evicted. It is laid down in *Bacon's Abridgment*, Tit. Rent (M): 'Where a lessor enters forcibly into part of the land, there are variety of opinions whether the entire rent shall not be suspended during the continuance of such tortious entry, and it seems to be the better opinion and the settled law at this day that the tenant is discharged from the payment of the whole rent till he be restored to the whole possession, that no man may be encouraged to injure or disturb his tenant in his possession, whom by the policy of the law, he ought to protect and defend' and it has been held that, when

1 *Merwanji Mancherji Cama* v. *Syed Sirdar Alikhan*, 23 Bom. 510.

2 *Tayawa* v. *Gurshidappa*, 25 Bom. 269.

3 *Dhunput Singh* v. *Mahomed Kazim Ispathain*, 24 Cal. 296.

4 *Kadumbinee Dossia* v. *Kasheenath Biswas*, 13 W.R. 338; *Chandrakant Das* v. *Rama Nath Barman*, 11 C. L. J. 591.

a lessee is evicted by title paramount to that of his lessor, an apportionment of rent may take place in an action brought for the rent". Therefore where the eviction from a portion of the property is due to title paramount, the rent is apportioned and the lessee has only to pay rateable rent for the portion of land that remains in his possession" [1]; but where such eviction is due to an act of the landlord, the entire rent is suspended [2]. He is, however, liable for rent that had accrued due before his eviction [3], provided he collected it, if the lands are let to others [4].

Accessions.

When during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to diluvion for the time being in force) is deemed to be comprised in the lease [5]. It may be made either by alluvion or other natural process, or by encroachment. The mere fact that a tenant is a tenant at will does not disentitle him to have the benefit of an accretion, so long as the original holding continues [6]. On general principles of equity, it was held that, when specified lands of a land owner were washed away by the river and were again reformed on the old site, it still remained the property of the original owner and not of the adjoining owner [7]. A tenant, even though permanent, cannot acquire an easement by prescription in the other lands of his lessor [8].

Encroachments.

The presumption as to encroachments made by the

[1] *Gopanand Jha* v. *Lalla Gobind Pershad*, 12 W. R. 109; *Imambandi Begum* v. *Kambeswari Pershad*, 21 Cal. 1005.

[2] *Gopanand Jha* v. *Lalla Gobind Pershad*, 12 W. R. 109; *Dunput Singh* v. *Mahomed Kazim Isphain*, 24 Cal. 296; *Harro Kumari Chowdhrani* v. *Purna Chandra Sarbayya*, 28 Cal. 188; *Lalita Sundari* v. *Surnomoyer Dasi*, 5 C. W. N. 353; *Raicharan Shar Majumdar* v. *The Administrator General of Bengal*, 9 C. L. J. 578; *Chandra Kanta Das* v. *Ramanath Barman*, 11 C. L. J. 591; *Ashutosh Dhar* v. *Joy Lal Sardar*, 17 C. L. J. 50; *Godai Molla* v. *Aminuddi Howludar*, 18 C. L. J. 509; *Saroda Prosad Bhattacharjee* v. *Mammothar Nath Mitter*, 19 C. W. N. 870.

[3] *Madhub Chunder Muzoomdar* v. *Sidhee Nuzcer Ali Khan*, 8 W. R. 54; *Bunsee Dhur Ghose* v. *Bheem Lal Sahoo*, 24 W. R. 219; *Gopal Naiken* v. *Suppa Pillai*, 19 M. L. J. 58.

[4] *Bunsee Dhur Ghose* v. *Bheem Lall Sahoo*, 24 W.R. 219.

[5] *Section 108 (d)* T. P. A.

[6] *Bhuggobut Singh* v. *Durg Bijoy Singh*, 16 W. R. 95.

[7] *Lopez* v. *Muddun Mohun Thakur*, 14 W. R. 11 (P. C.).

[8] *Mani Chunder* v. *Boikanta*, 29 Cal. 363; *Moni Chandra* v *Baikanta*, 9 C. W.N. 856; *Jeerab Ali* v. *Allabuddin*, 1 C W. N. 151; *Udi Singh* v. *Kashi Ram*, 14 All. 185.

tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant as long as the original holding continues and afterwards for the benefit of his landlord, unless it clearly appears by some act done at the time that the tenant made the encroachment for his own benefit [1]. Therefore encroachments made by him are not considered absolutely for his own benefit against his landlord but are deemed to be added to the tenure and to form part thereof [2]. In *Problad Toer* v. *Kedarnath* [3], *Maclean* C. J. observed that the rule in *Goroo Doss Roy* v. *Issur Chander Bose* [4] was laid down too broadly and applied not to encroachments made by tenants on other lands of their own landlords but only to encroachments upon waste lands of third parties and it was therefore held that a tenant who encroached upon the other lands of his landlord might, if so liked by him be treated as a tenant in respect of that land but could not compel the landlord against his will to accept him as a tenant in respect of that land and that the landlord might sue to recover it back within the period of the lease [5]. It is open to the tenant to show that, at the time he made the encroachment he intended it for his own benefit [6]. But it cannot be presumed that he made the encroachment for the benefit of the landlord [7]. The Calcutta High Court has held that in order to render the possession of the tenant adverse to the landlord, it was necessary to show that he asserted a title adverse to the landlord or the landlord became aware of such encroachment [8], but the Madras High Court has

[1] *Goroo Doss Roy* v. *Issur Chunder Bose*, 22 W. R. 246; *Nuddyarchand Shaha* v. *Meajun*, 10 Cal. 820; *Ishan Chandra Mitter* v. *Raja Rama Rangan Chowdhry*, 2 C. L. J. 125; *Esubai* v. *Damodar Ishwardas*, 16 Bom. 552; *Muthurakoo Thevan* v. *Orr*, 21 M. L. J. 615; *Tepu Mahammad* v. *Tejayat Mahammad*, 19 C. W. N. 772.

Goroo Doss Roy v. *Issur Chunder Bose*, 22 W. R. 246; *Esubai* v. *Damodar Ishwardao*, 16 Bom. 552

[3] 25 Cal. 302.

[4] 22 W. R. 246.

[5] *Naddyar Chand Shaha* v. *Meagan*, 10 Cal. 820; *Prohlad Toer* v. *Kedar Nath Bose*, 25 Cal. 302.

[6] *Muthoorakoo Theran* v. *Orr*, 21 M. L. J. 615.

[7] *Ishwar Chandra Mitter* v. *Raja Rama Rangar Chowdhry*, 2 C. L. J. 125.

[8] *Wali Ahmed Chowdhry* v. *Tota Meak Chowdhry*, 31 Cal. 397; *Krishna Govinda Sawadar* v. *Banka Behari Saha*, 13 C. W. N. 698.

taken a contrary view [1]. If during his tenancy he encroaches upon the lands of a third person and holds it with his own tenure until the expiration of the tenancy, he is considered to have made the encroachment not for his own benefit but for that of his landlord; and if he has acquired a title against a third person by adverse possession, he is considered to have acquired it for his landlord and not for himself [2].

Destruction.

When through fire, tempest or flood, or violence of an army, or of a mob, or other irresistible force, any material part of the property demised is wholly destroyed or rendered substantially and permanently unfit for the purpose it was let, the lessee, may, at his option, treat the lease as void, if the injury was not occasioned by his wrongful act or default [3]. Where a lease was of the coffee plants only, the rent thereof is not recoverable when they are destroyed by fire [4]; also where godowns were leased and were destroyed by fire, the lessee is entitled to treat it as void and recover back any sum he might have paid by way of advance [5]. When the lessee exercises the option of cancelling the lease, he is bound at once to give possession, vacant possession it may be, to the lessor; otherwise, he is liable to pay rent [6].

Repairs.

The lessee may make repairs himself and deduct the expense of such repairs with interest from the rent or otherwise recover it from the lessor, if the lessor is bound to make them and fails to do so [7]. He can also make any payment which the lessor is bound to make and which, if not made by him is recoverable from him or against the property, and deduct it with interest from the rent or otherwise recover it from the lessor [8].

Removal of structures.

He is entitled to remove at any time during the continuance of the lease all things which he has attached to the earth, provided he leaves the property in the state in which he received it [9]. Before the Transfer of Property Act the

[1] *Muthurakoo Thevan* v. *Orr*, 21 M. L. J. 615.

[2] *Nuddyar Chand Shahe* v. *Meajun* 10 Cal. 820.

[3] *Section* 108 (e) T.P.A.

[4] *Kunhayen Hagi* v. *Mayan*, 17 Mad. 98.

[5] *Dhuramsey Soonderdas* v. *Ahmedbhai Hubibhoy*, 23 Bom. 15.

[6] *Sidick Hagi Hossein* v. *Bruel & Co*, 35 Bom. 333.

[7] *Section* 108 (f) T. P. A.

[8] *Section* 108 (g) T. P. A.

[9] *Section* 108 (h) T. P. A.

Indian common law was expressed in *In the matter of the petition of Thakoor Chunder Paramanick* [1] thus, "According to the usages and customs of the country, buildings and other improvements made on land do not, by the mere accident of their attachment to the soil, become the property of the owner of the soil; and we think that it should be laid down as a general rule that, if he who makes the improvement is not a mere trespasser, but is in possession under any *bona fide* title or claim of title, he is entitled either to remove the material, restoring the land to the state in which it was before the improvement was made, or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil—the option of taking the building, or allowing the removal of the material, remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate he may possess." Therefore it was held that the only right of the lessee was to remove the building or other improvement which he might have made, and that he was not entitled to any compensation from the lessor for such building or improvement on being evicted at the termination of the lease [2]. In order to create a right to compensation there must be circumstances giving rise to an estoppel against the landlord [3]. A difference of opinion arose between *Sir Arnold White, C. J.* and *Sankaran Nair, J.* in *Angammal* v. *Aslami Sahib*[4] whether the assignee of the lessee who had attorned to the lessor, could after the termination of the lease, remove the building erected by him to the knowledge of the lessor or claim compensation; the former holding that he was entitled to neither remedy and

[1] 6 W. R. 229.

[2] *Venatavaragappa* v. *Tirumalai*, 10 Mad. 112; *Ismai Kani Rowthan* v. *Nazarali Sahib*, 27 Mad. 211; *Parbutty Bewah* v. *Woomatara Dabee*, 14 Ben. L. R. 201; *Russikloll Mudduck* v. *Lokenath Kurmoka*. 5 Cal. 688; *Ismail Khan Mahomed* v. *Taigun Bibi*, 27 Cal. 570; *Shaik Husain* v. *Govardhanadas Parmanandas*, 20 Bom. 1; *Jugmohan Das* v. *Pullonjee*, 22 Bom. 1; *The Secretary of State for Foreign Affairs* v. *Charles-Worth Pilling and Co.* 26 Bom. 1; *Beni Ram* v. *Kundu Lal*, 21 All. 496: 26 I. A. 58.

[3] *Shaik Husain* v. *Govardhanadas Parmanandas*, 20 Bom. 1; *Jugmohan Das* v. *Pullonji*, 22 Bom. 1; *Ismai Kani Rowthan* v. *Nazarati Sahib*, 27 Mad. 211; *Ismail Khan Mahomed* v. *Taigrin Bibi*, 27 Cal. 570; *Beni Ram* v. *Kundu Lal*, 21 All 496: 26 I. A. 58.

[4] 38 Mad. 710.

the latter that he was entitled to one of them. In the Letters Patent Appeal filed on account of this difference of opinion, *Miller*, *J* agreed with the former [1].

Emblements.

The lessee can claim emblements when the lease is of uncertain duration and is determined by any means except the fault of the lessee [2]. A mortgagor retaining possession of the mortgaged property after the time fixed for payment has no right to them [3]. Where a mortgagee in possession sued on his mortgage and brought the properties to sale which were sold to an auction purchaser, it was held that the mortgagee could not claim from the auction purchaser the value of the then standing crops [4].

Transfer.

The lessee can transfer absolutely, or by way of mortgage, or sub-lease, the whole or any part of his interest in the property, and the transferee may again transfer it. But the lessee does not, by such transfer, cease to be subject to any of the liabilities attaching to the lease [5]. The mere transfer by the lessee and notice of such transfer to the lessor will not put an end to his liability without any act or consent on the part of the latter [6]. The lessor may at the same time sue the lessee upon his express covenant and the assignee on the privity of estate [7], though he can have execution against one only [8]. Privity of estate between the lessor and the lessee's assignee is terminated by the assignment to a third person by the assignee, and the latter will not be responsible to the lessor for rent after he has assigned his rights under the assignment to himself. As between the assignee and the lessor, rent accrues from day to day and the former can claim an apportionment of rent due after the assignment of the lease to him [9]. The assignee's liabilities begin from the date of the assignment and not from the date when he obtains

[1] *Angammal* v. *Aslami Saheb*, 31 Mad. 710.

[2] *Section* 108 (*i*) T. P. A.

[3] *Land Mortgage Bank* v. *Vishnu*, 2 Bom. 670.

[4] *Ramalinga* v. *Samiappa*, 13 Mad. 15.

[5] *Section* 108 (*j*) T. P. A.

[6] *Sasi Bhushun Raha* v. *Tara Lal Singh Deo Bahadur*, 22 Cal. 494.

[7] *Kamala Nayak* v. *Ranga Rao*, 1 M. H. C. R. 24; *Kunhanujan* v. *Anjelu*, 17 Mad. 296.

[8] *Kunhanujan* v. *Anjelu*, 17 Mad. 296.

[9] *Kunhiswo* v. *Mulloli Chathu*, 38 Mad. 86.

possession [1]. The same principle applies to agricultural leases [2].

Disclosure by lessee.

The lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which is about to take of which he is and the lessor is not, aware, and which materially increases the value of such interest [3]. He is bound to pay or tender at the proper time and place the premium or rent to the lessor or his agent [4]. He is to keep, and on the termination of the lease, to restore the property in as good a condition as it was at the time when he was put in possession, subject only to such changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and when such defect had been caused by an act or default on the part of the lessee, his servants or agents, to make it good within three months after such notice has been given or left [5]. There is a duty on the part of the lessee to maintain the boundaries of the property leased to him. When a person occupied three different estates as a tenant or dependent taluqdar for a long period, and allowed the boundaries of those estates to become so confused that the one could not be distinguished from the other, it was held that the boundaries of the estates ought to be fixed in such a manner that the produce of the total quantity of land to be included in each of the estates bore the same proportion to the total of the jumma payable for such taluq as the produe of the whole of the said lands bears to the total of the jama as payable on account of the said three taluqs [6]. Where, through the negligence of the tenant, the land demised becomes confounded with his own, he is bound to deliver to the landlord a portion of the lands of which the boundaries have

to maintain boundaries.

[1] *Monica Kitheria Saldanha* v. *Subraya Hebbara*, 30 Mad. 410; dissenting from *Kamala Nayak* v. *Ranga Rao*, 1 M. H. C. R. 24; *Macnaghten* v. *Lalla Mewa Lall*, 3 C. L. R. 285.

[2] *Monica Kitheria Saldanha* v. *Subraga Hebbara*, 30 Mad. 410.

[3] *Section* 108 (k) T. P. A.

[4] *Section* 108 (l) T. P. A.

[5] *Section* 108 (m) T. P. A.

[6] *Khermamoyee* v. *Shashe Bhoosun Gangooly*, 9 W. R. 94.

been confounded equal in value to the lands demised [1]. But the *onus* is on the landlord to show what lands were demised. If the tenant destroys the boundaries of the lands demised or otherwise mixes up those lands with other lands in his possession, then the *onus* of pointing out the lands is shifted on to the tenant [2]. He is bound to give notice of any proceeding affecting the property or any encroachment thereto to the lessor [3], and must use the property and its products as a man of ordinary prudence. He must not use or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted or commit any other act which is destructive or permanently injurious thereto [4]. He must not without the lessor's consent erect on the property any permanent structures except for agricultural purposes [5] and must on the determination of the lease put the lessor in possession of the property [6].

Determination of leases.

Section 111 of the Transfer of Property Act lays down the circumstances under which a lease of immoveable property is determined. It is determined (*a*) by the afflux of the time limited thereby: (*b*) where such time is limited conditionally on the happening of some event—by the happening of such event: (*c*) where the interest of the lessor in the property determines on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event: (*d*) by merger: (*e*) by surrender, express or implied: (*f*) by forfeiture: and (*g*) notice to quit.

Merger.

Merger takes place when the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right [7]. It may be either by act of parties, operation of law, or in execution of a decree [8], and applies to all leases,

[1] *Dugappa Chetti* v. *Vidhia Purna Tirthaswami*, 6 Mad. 263; *Ismail Khan Mahomed* v. *Broughton*, 5 C. W. N. 846.

[2] *Ittithayeri Nambudri* v. *Kanvastri Isthri Amma*, 14 I. C. 284.

[3] *Section* 108 (*n*) T.P.A.

[4] *Section* 108 (*o*) T.P.A.

[5] *Section* 108 (*p*) T.P.A.

[6] *Section* 108 (*q*) T.P.A.

[7] *Section* 111 (*d*) T.P.A.

[8] *Promotho Nath* v. *Kali Prasanna*, 28 Cal. 744.

permanent or temporary. The principle of merger is founded on the fact that a person cannot be both landlord and tenant of the same land, the two rights being incompatible and inconsistent. No merger and the consequent determination of the tenancy arises on the tenant taking a mortgage of the property, and on the redemption of the mortgage, he reverts to his position of tenant [1].

Surrender.

A landlord is entitled to re-enter on the expiration of the lease, and the tenant is bound to surrender for which there need be no covenant. The lessee may at any time during the continuance of the lease, yield up the term either to the lessor or his assignee. A formal deed of conveyance is not necessary to make a valid surrender [2]. The lessee cannot by merely relinquishing his holding after notice to the lessor make a valid surrender, without being accepted by him [3]. The words "up to the present time my father and I have been cultivating the land but the land belongs to the inamdar. I have no title over it and the inamdar can give it to cultivation to any one he pleases" were held sufficient to operate as a surrender [4]. Where there is no intention to surrender, it cannot be inferred from mere cessation in the payment of rent, [5] although it may be for a period of twelve years [6]. Where a portion of the property is surrendered, the lessee is not entitled to a proportionate rebate of rent [7]. If during the continuance of a lease for a fixed term, the lessee takes a permanent lease from the landlord, there will be a surrender of the original lease [8].

Effect of surrender.

A surrender, express or implied, does not prejudice an under-lessee who has acquired an interest prior thereto, though it puts an end to the interest of the lessee and brings the under-lessee into direct relations with the lessor. A surrender made by the lessor for the propose of renewing the lease does not bring the under-lessee into direct relations

[1] *Kallu* v. *Diwan*, 24 All. 487.

[2] *Imambandi Begum* v. *Kambeswari Pershad*, 14 Cal. 109 (P. C.)

[3] *Tudoonath* v. *Kilburn and Co*, 9 Cal. 671; *Krishna* v. *Lakshminaranappa*, 15 Mad. 67.

[4] *Bhutia Dhondu* v. *Ambo*, 13 Bom. 294.

[5] *Obhoya Charan* v. *Kailash Chunder*, 14 Cal. 751.

[6] *Prem Sukh Das* v. *Bhupia*, 2 All. 517.

[7] *Saroda Soondaree* v. *Hazu Mahomed*, 5 W.R. (Act X) 78.

[8] *Ramunni* v. *Kerala Varma Raja*, 15 Mad. 166.

with the lessor. But forfeiture puts an end to all under-leases, except when it has been procured by the lessee in fraud of the under-lessee or relief against forfeiture has been given under section 114 of the Transfer of Property Act [1].

Forfeiture.

Forfeiture takes place when (1) the lessee breaks an express condition which provides for re-entry on breach thereof or renders the lease void; or (2) the lessee denies the lessor's title [2] and applies to permanent as well as temporary leases [3], Non-payment of rent will not form a ground of forfeiture, unless there is a distinct clause to that effect [4]. A covenant against alienation being for the benefit of the lessor is valid [5]. Courts always lean against forfeiture [6], and where the provision is clear, it will be enforced. But when it is penal, it will be relieved against [7]. In the absence of an express condition that on breach of the stipulation against alienation, the lessor may re-enter or the lease shall become void, there is no forfeiture of the lease [8] and the lessee is only entitled to damages for breach of the condition [9] The provision for re-entry on breach of condition has no application when it is not broken voluntarily by the lessee, as where the land is sold against his will by an order of Court in execution of a decree against him[10], but this contingency also may be provided for in the lease[11]. But

[1] *Section* 115 T.P.A.

[2] *Section* 111 (g) T. P. A.

[3] *Subbaraya Kamti* v. *Krishna Kamti*, 6 Mad. 159; *Narayana Shanboga* v. *Narayana Nayak*, 6 Mad. 327; *Kally Dass Ahiri* v. *Monmohini Dassee*, 24 Cal. 440.

[4] *Narayana Shanboga* v. *Narayana Nayak*, 6 Mad. 327; *Tamaya bin Annaya* v. *Timapa Ganpaya*, 7 Bom 262; *Mustijatulla* v. *Noorzahan* 9 Cal. 808.

[5] *Parameshri* v. *Vittappa Shanboga*, 26 Mad. 157; *Vyankatraya bin Ramkrishnapa* v. *Shivarambal*, 7 Bom. 256.

[6] *Ram Nursingh Chuckerbutty* v. *Dwarkanath Gangooly*, 23 W. R. 10.

[7] *Kottal Uppi* v. *Edavalath Tathan Nambudri*, 6 M. H. C. R. 258; *Subbaraya Kamti* v. *Krishna Kamti*, 6 Mad. 159; *Narayana Shanboga* v. *Narayana Nayak*, 6 Mad. 327; *Vaguram* v. *Rangayyangar*, 15 Mad. 125; *Mahomed Ameer* v. *Peryag Singh*, 7 Cal. 566.

[8] *Parameshari* v. *Vittappa Shanboga*, 26 Mad. 157; *Mailthi Hengsu* v. *Soma*, 29 M. L. J. 452; *Tamaya bin Annayya* v. *Timapa Ganpaya*, 7 Bom. 262; *Narayan Dassappa* v. *Ali Saiba*, 18 Bom. 603; *Mathar Saheb* v. *Samabawa Gujranshah*, 21 Bom 195; *Nil Madhab Sikdar*, v. *Narattam Sikhdar*, 17 Cal. 826; *Basarat Ali Khan* v. *Manivulla*, 10 C. L. J. 49.

[9] *Tamaya bin Annaya* v. *Timapa Ganpaya*, 7 *Bom*. 262.

[10] *Subbaraya Kamti*, v. *Krishna Kamti*. 6 Mad. 159; *Tomaya bin Annaya* v. *Tamapa Ganpaya*, 7 Bom 262; *Nil Madhab Sikdar* v. *Narattan Sikdar*, 17 Cal. 826.

[11] *Subbaraya Kamti* v. *Krishna Kamti*, 6 Mad. 159; *Vyankantraya bin Ramkrishnahe* v. *Shivarambhat*, 7 Bom. 256.

from mere prohibition against under letting, a right of re-entry cannot be presumed [1]. An agricultural tenant with a permanent right of occupancy has no right to build dwelling houses, not for agricultural purposes ; but such erection will not entail forfeiture and will only entitle the landlord to the removal of the building [2].

Denial of title.

Section 116 of the Indian Evidence Act enacts that "no tenant of immoveable property or person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant, had at the beginning of the tenancy a title to such immoveable property." Therefore in a suit for ejectment by the landlord against the tenant and his transferees on the expiry of the term of the tenancy, the latter are precluded from pleading any other right they may have to the possession of the lands [3]. But the tenant is not prevented from impeaching the title of the lessor's assignee [4], nor showing the invalidity of the lease [5]. Where a lease is executed in favour of a person benami for another, the real owner is the person whose title cannot be disputed by the tenant and not the benamidar [6]. The tenant can show that the lessor's title has since the lease determined [7]. A person who gains possession of the lands by collusion with the tenant in possession has a good title against all persons but those who let the tenant in possession [8]. A denial of the landlord's title in any suit other than a suit for ejectment will afford a good cause of action to eject the

[1] *Mussamut Ruhmoonissa* v. *Mussamat Soopun Jan.* 18 W.R. 244; *Dassorathy Hari Chunder Mahapattra* v. *Rama Krishna Jana*, 9 Cal. 26.

[2] *Orr* v. *Morithiyanja Gurukkal*, 24 Mad. 65; *Appa Rao Venkatadri*, 17 M. L. J. 197; see also *Ramanàthan* v. *Zamindar of Ramnad*, 16 Mad. 467.

[3] *Kunhi Mayan* v. *Muhammad*, 16 M. L. J. 351.

[4] *Doorga Kripa Roy* v. *Sore Janoo Lathak*, 18 W. R. 465; *Lobai Mollah* v. *Kally Dass Roy*, 8 Cal 238; *Lal Mahomed* v. *Kallanus*, 11 Cal 519.

[5] *Lobai Mollah* v. *Kally Dass Roy*, 8 Cal 238.

[6] *Kuppu Konan* v. *Tirugnana Sammandam Pillai*, 31 Mad. 461.

[7] *Ammu* v. *Rama Krishna Sastri*, 2 Mad. 226; *Subbraya* v. *Krishnappa*, 12 Mad. 422; *Vsman Koya Akoth*, 15 M. L. J. 368; *Thuppan Nambudripad* v. *Ittichiri Amma*, 37 Mad. 373; *Burn and Co.* v. *Rusho Moyee Dossee*, 14 W. R. 85; *Mohum Mahtoo* v. *Meer Shumsool Hoda*, 21 W.R. 5; *Lal Mahomed* v. *Kallanus*, 11 Cal. 519; *Veder* v. *Nilkanath*, 22 Bom. 428; *Bala Kushaba* v *Abai Amrita Vaghmode*, 11 Bom. L. R. 1093; *Nakchedi Bhagat* v. *Nakchedi Misr*, 18 All 329.

[8] *Annayya* v. *Chinnan*, 20 M. L. J. 355.

tenant [1]. But strict proof of denial is necessary [2]. There is no forfeiture when the title of the landlord is not denied, but the tenant sets up a permanent tenancy [3]; nor when the tenant does not question the validity of the lease but only its assignment by the lessee [4]; nor a mere renunciation of tenancy without denial of the landlord's title [5]; nor a refusal by the tenant to pay rent till he knew who was the rightful owner [6]; nor setting up title in a third person as co-sharer [7]; nor mere admission in good faith by a tenant under an agricultural lease of the superior right of a third person to a portion of the land included in the tenancy without denying his landlord's title to receive the entire rent due to him [8].

Disclaimer before suit.

As the cause of action to a suit for ejectment must be based on some thing that accrued antecedent to the suit, a disclaimer of the landlord's title made in the course of the suit, as in the written statement will not work a forfeiture [9]. But an allegation in the written statement of a purchase by the tenant from third parties before suit is evidence of a purchase from them before suit and therefore of disclaimer before suit [10].

[1] *Ishan Chunder Chattopadya* v. *Shama Charan Dutt*, 10 Cal. 41; *Ramgati Mohurer* v. *Pran Huri Seal*, 3 C. L. J. 201.

[2] *Mahewson* v *Jadu Mahto*, 12 C. W. N. 525.

[3] *Abdulla Rawuthan* v *Sabbarayer*, 2 Mad. 346; *Subba* v. *Nagappa*, 12 Mad 353; *Unhamma Devi* v *Vaikunta Hegde*, 17 Mad. 218; *Chinna Narayudu* v. *Haris Chandra Deo*, 27 Mad 23; *Kali Kishen Tagore* v *Galam Ali*, 13 Cal. 3; *Kali Kishen Tagore* v. *Golam Ali*, 13 Cal. 248; *Purshattam Bapu* v. *Dattatraya Rayagi*, 10 Bom. 669; *Vithu* v. *Dhondi*, 15 Bom 407; *Lalu Gagal* v. *Bai Motan Bibi*, 17 Bom. 631; *Dodha Madharao* v. *Narayan Gudre*, 18 Bom. 110; *Venkaji Krishna Nadkarni* v. *Lakhman Devgi Kandar*, 20 Bom. 354; *Haidri Begam* v. *Nathu*, 17 All 45. Contra, *Baba* v *Vishvanatha Toshi*, 8 Bom 228.

[4] *Srimati Farmai Bibi* v. *Sheikh Tasta Haddal Huisan*, 12 C. W. N. 587.

[5] *Protab Narain Mookerjee* v. *Biraj Dossee*, 19 C. L. J. 77.

[6] *Mahewson* v. *Jade Mahto*, 12 C. W. N. 525.

[7] *Mea Matullah* v. *Bai pullah*, 26 I. C. 619.

[8] *Abbakka Shettah* v. *Seshamma*, (1914) M. W. N. 915.

[9] *Paidal Kiduri* v. *Parakal Imbichunni Kidavu*, 1 M. H. C. R, 13; *Abdulla Rawuthan* v. *Subbarayar*, 2 Mad. 347; *Sabba* v. *Nagappa*, 12 Mad. 353; *Madavan* v. *Athi Nangiyar*, 15 Mad. 123; *Unhamma Devi* v. *Vaikunta Hegde*, 17 Mad. 218; *Peria Karuppan* v *Subramaniam*, 31 Mad. 261; *Purannath Shaha* v. *Madhu Khulu*, 13 Cal. 96; *Nizamuddin* v. *Mamtazuddin*, 28 Cal. 135; *Srimati Mallika Dassi* v. *Makhan Lal Chowdry*, 9 C. W. N. 928; *Pratap Narain Deo* v. *Harhar Singh*, 36 Cal 927; *Vithu* v. *Dhondi*, 15 Bom. 407; *Dodhu* v. *Madhavarao Narayan Godre*, 18 Bom. 110; *Haidri Begam* v. *Nathu*, 17 All. 45 See however *Baba* v. *Vishvanatha Joshi*, 8 Bom. 228; *Gopal Rao Ganesh* v. *Kishorkalidas*. 9 Bom. 527.

[10] *Kathijakutti* v. *Kuthussa*, 20 M. L. J. 415.

Effect of disclaimer.

In the case of a tenancy determinable by a notice to quit, the tenant forfeits his right to it by denying the landlord's title before suit [1]. Any consideration paid by the lessee for the lease is forfeited by disclaimer and he cannot, in the absence of a provision to that effect, convert it into a debt which must be paid by the lessor before he can enforce the forfeiture [2].

Procedure before ejectment.

Under the Transfer of Property Act before the lessor can be entitled to eject the lessee, it must be shown that the former declared his intention to determine the tenancy, and that such intention was declared by some act or other before the institution of the suit for ejectment. This principle was applied in *Venkataramana Bhatta* v. *Govindraja* [3], to a lease executed before the Transfer of Property Act, and such application was doubted in subsequent cases [4] which held that in the cases of leases executed before the Transfer of Property Act, the institution of the action for ejectment on forfeiture would itself amount to the manifesting of the intention to determine the tenancy. The principle of these decisions has been held applicable to agricultural leases [5].

Waiver of forfeiture.

A forfeiture is waived by acceptance of rent which has become due since the forfeiture [6], or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting, provided the lessor is aware that the forfeiture has been incurred, but there is no waiver when rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture [7]. A suit for rent against a tenant for a succeeding year is

[1] *Unhamma Devi* v. *Vaikunta Hegde*, 17 Mad. 218; *Kathijokutti Umma* v. *Kathussa*, 20 M. L. J. 415; *Ansar Ali Jemadar* v. *Grey*, 2 C.L.J. 403; *Anandemoyi* v. *Lakshmichandar* 3 C. L. J. 274; *Haidri Begum* v. *Nathu*, 17 All. 45.

[2] *Kammaran Nambiar* v. *Chindan Nambiar*, 18 Mad. 32.

[3] 31 Mad. 403.

[4] *Padmanabhayya* v. *Ranga*, 34 Mad. 161; *Ramakrishna Mallay* v. *Bapuraya*, 23 M. L. J. 715. In the latter case *Sir Arnold White*, C. J. who was party to the decision in *Venkataramana Bhatta* v. *Govindaraja*, 31 Mad. 403 observed that it was decided as if it was governed by the Transfer of Property Act.

[5] *Korapalu* v. *Narayana*, 38 Mad. 445.

[6] *Kali* v. *Fuzle*, 9 Cal. 843; *Kristo Nath Koondoe* v. *Brown*, 14 Cal. 176.

[7] *Section* 112, T. P. A.

a waiver of forfeiture incurred in the previous year [1]. Waiver of one breach does not bar the cancelment of the lease for a subsequent breach [2]. Where the lessor is put to election after the occurrence of forfeiture and elects to determine the lease, it is irrevocable and parties cannot by a subsequent agreement revive the old tenancy [3].

Relief against forfeiture.

Courts are expressly empowered to relieve against forfeiture incurred for non-payment of rent. Section 114 of the Transfer of Property Act provides that "where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if at the hearing of the suit, the lessee pays or tenders to the lessor the rent, in arrears, together with the interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not incurred". This rule applies also to the relationship of landlord and tenant created under a decree of Court [4]. There is a difference of opinion in the Madras High Court whether the Court can grant relief against forfeiture for non-payment of rent, when a period of grace is fixed in the lease for its payment. The decisions in *Narayana Naika* v. *Vasudeva Bhatta* [5], *Narayana Kamti* v. *Handu Shetty* [6], *Adiraja Shetty* v. *Billa Tyampa* [7], *Maha Lakshmi* v. *Lakshmi* [8], and *Tungama Shettatti* v. *Korattie Shettiti* [9] hold that the Court has no power; while the contrary view is taken in *Appayya Shetty* v. *Mahammad Beary* [10].

Limitation against landlord.

When a tenancy for years is outstanding, no adverse possession against the tenant will bar the landlord's right

[1] *Jogeshuri Chowdhrani* v. *Mahomed Ebrahim*, 14 Cal. 33.

[2] *Cutenho* v. *Souza*, 1 M. H. C.R. 15; *Duli Chand* v. *Meher Chand Sahoo*, 8 W. R. 138; *Chunder Nath Missir* v. *Sirdar Khan*, 18 W.R. 218,

[3] *Chengiah* v. *Raja of Kalahasti*, 24 M. L. J. 263.

[4] *Balambhat* v. *Vinayak Ganputrav*, 35 Bom. 239.

[5] 15 M. L. J. 208.

[6] 15 M. L. J. 210.

[7] 20 M. L. J. 944.

[8] 21 M. L. J. 960.

[9] 16 I. C. 208.

[10] 29 M. L .J. 381.

to possession at the end of the term [1]. The contrary view was taken by *Sundara Ayyar, J.* in *Ambalavana Chetty* v. *Singaravelu Udayar* [2]. Limitation for recovery of possession begins to commence as against the landlord on the determination of the term, where there is nothing to indicate that a fresh tenancy has been entered into [3]. When the tenant holds over and pays rent to the landlord, he becomes a tenant from year to year and his possession is not adverse to that of the landlord until that tenancy is determined [4]. The Madras High Court has held that a person who lawfully came into possession of land as tenant from year to year or for a term of years cannot, by setting up during the continuance of such relation any title adverse to that of the landlord inconsistent with the real relation between them, —and that however, notoriously and to the knowledge of the other party—acquire, by the operation of the law of limitation, title as owner, or any other title inconsistent with that under which he was let into possession [5]. The mere setting up of an adverse title by the tenant will not put an end to the tenancy, though it will render him liable to eviction at once, and until the landlord puts an end to the tenancy, limitation does not run against him [6]. In *Vadapalli Narasimham* v. *Seetharamamurthy* [7], it was held that the representatives of a tenant on sufferance who entered into possession after his death were not tenants within the meaning of article 139 of the Limitation Act and that a suit against

[1] *Ramanathan Chetty* v *Pullikutti Servai*, 21 Mad. 288; *Innasi Pillai* v. *Sivagnanam Pillai*, 19 M.L.J.347; *Seshamma Shettati* v. *ChickyaHegade*, 25 Mad. 507; *Vadapalli Narasimham* v. *Seetharamamurthy*, 31 Mad. 163; *Davis* v *Kazee Abdul Hamed*, 8 W.R. 55; *Womesh Chunder Goopte* v. *Raj Narain Roy*, 10 W. R. 15; *Krishna Gobind Dhur* v. *Mari Churn Dhur*, 9 Cal. 367; *Sarat Sundari* v. *Bhoba Pershad*, 13 Cal. 101; *Ganga Kumar Mitter* v. *Asutosh Goswami*, 23 Cal. 863; *Kishwar Nath Sahe Dev* v. *Kali Sankar Sahai*, 10 C. W. N. 843.

[2] (1912) M. W. N. 669.

[3] *Seshamma Shettati* v. *Chickya Hegade*, 25 Mad. 507; *Vadapalli Narasimham* v. *Seetharamamoorthy*, 31 Mad. 163; *Kandasami Mudali* v. *Sadagopa Mudali*, 16 I. C. 546; *Sangila* v. *Maruthamuthu*, 20 M. L. J. 131; *Kishwar Nath Sahi Dev* v. *Kali Sankar Sahi*, 10 C. W. N. 843; *Madan Mahan Gossain* v. *Kumar Rameshwar Malia*, 7 C L.J. 615; *Pusa Mal* v. *Makdum Baksh*, 31 All. 514; *Kantappa* v. *Seshapa*, 22 Bom 393; *Chandru* v. *Dayi Bhan*, 24 Bom. 504.

[4] *Linga Reddi* v. *Venkata Krishna Rao*, 21 M. L. J. 166.

[5] *Seshamma Shettati* v. *Chickya Hegade*, 25 Mad. 507; *Ramaswamy Naick* v. *Thangammal*, 26 Mad. 488; *Vadapalli Narasimham* v. *Seetharamamoorthy*, 31 Mad. 163.

[6] *Srinivasa Iyer* v. *Muthuswamy Pillai*, 24 Mad. 246; *Seshamma Shettati* v. *Chickya Hegade*, 25 Mad. 507.

[7] 31 Mad. 163.

them for possession was governed by article 144; but this view was doubted in *Subbraveti Ramiah* v. *Sundala Ramanna* [1]. The fiction of a tenancy by sufferance after the expiry of the lease can not be applied to agricultural leases and therefore adverse possession in such cases does not begin, unless the tenant actually surrenders possession of the land to the landlord [2]. In Malabar there can be no adverse possession by the tenant against the landlord until he has been paid the compensation due to him for his improvements [3]. Mere non-payment of rent for any length of time will not constitute adverse possession, unless it was accompanied by denial of the landlord's title for more than twelve years prior to suit [4]. When once the relation of landlord and tenant is established, it lies on the tenant to show his title by adverse possession [5]. Just in the same way a person can prescribe for the full ownership, he can equally prescribe for a limited interest therein [6].

Permanent tenancies in South Canara.

In South Canara, permanent tenants are known as *Mulgaini* or *Mulgeni* tenants. *Mulgeni* is defined in Wilson's Glossary as "the tenure of an original occupant, either of new or previously uncultivated lands with hereditary succession, or of a hereditary farm or land at a fixed rate, corresponding with the tenure of the hereditary non-proprietary cultivator of the North-West Provinces', and

[1] 33 Mad. 260.

[2] *Ganapathi Mudali* v. *Venkata Lakshminarasayya*, (1914) M. W. N. 728.

[3] *Kunhi Kuthiali Hugi* v. *Arotoni Goosa*, 24 M. L. J. 472.

[4] *Tiruchurna Perumal Nadar* v. *Sanguvein*, 3 Mad. 118; *Jagganatha Pandiajiar* v. *Muthia Pillai*, 14 M. L. J. 477; *Lakshmi Narayana* v. *Zeminder of Vallur*, 29 Mad. 42; *Sriramulu* v. *Jogiraju*, 24 M. L. J. 288; *Rango Lall Mundul* v. *Abdul Gaffoor*, 4 Cal. 314; *Ramacharan Chowdhry* v. *The Administrator General of Bengal*, 6 C. L. J. 272; *Madan Mohan Gossain* v. *Kumar Rameshwar Malia*, 7 C.L.J. 615.; *Rameshar Koer* v. *Gobardhan Lal*, 7 C.L.J. 202; *Birendra Kishore* v. *Roshan Khan*, 39 Cal. 453; *Apurba Krisha Roy* v. *Asutosh Dutt*, 9 C. W. N. 122; *Srinath Roy* v. *Sattyar Kerkar Sen*, 13 C. L. J. 660; *Dadoba* v. *Krishna*, 7 Bom. 34; *Tahia* v. *Sadashiv*, 7 Bom. 40; *Abdul Karim* v. *Chinna Bibi*, 19 I. C. 119.

[5] *Tiruchurna Perumal Nadar* v. *Sanguvien*, 3 Mad. 118.

[6] *Sankaran* v. *Periasami*, 13 Mad. 467; *Subbayya* v. *Maddleliah* 17 M. L. J. 469; *Ishar Chandra Mitter* v. *Raje Ramrangan Chuckerbutty*, 2 C. L. J. 125; *Icharan Singh* v. *Nilmoney Singh*, 35 Cal. 470; *Gopal Kristna* v. *Lakhiram*, 11 C. W. N. 634; *Kali Charan Saha* v. *Dabruddin Ahmed*, 18 I. C. 616; *Protab Narain Mukerjee* v. *Biraj Dasi*, 20 I. C. 823; *Yamunabhai* v. *Dhindi*, 5 Bom. L. R. 186; *Trimback* v, *Sheik Gulam Tulani*, 12 Bom. L. R. 208; *Thakore Fatesinghji* v. *Dalal*, 27 Bom. 515.

[7] 353.

indefeasible as long as the stipulated rent is paid: a perpetual lease"; and *Mulgenigar* as "a hereditary cultivator, a tenant holding a perpetual lease, not removeable as long as he pays his rent" [1]. The word *Gaini* means "rent paid to the landlord or proprietor" [2]. *Mulgeni* is also known as *Kayamgeni* and *Nigdigeni*; and a *Mulgeni* granted in consideration of a premium is known as *Ardha-mulgeni*. The ordinary form of *mulgeni* is one fixed in money or a quantity of produce, and rent is never payable in South Canara by a share of the produce [3].

Mulgeni.

A *Mulgeni* tenancy is a tenancy for ever at a fixed rent. When the revenue payable to Government on lands held on *Mulgeni* is increased, such increase is to be paid by the *Mulgar* and not by the *Mulgenigar* [4]. This species of tenure is as good as a freehold, and the *mulgeni* tenant is rather a kind of subordinate landlord or sub-proprietor [5]. It is hereditary [6], and the tenant can sell, mortgage, lease, bequeath his lands and in default of children, can adopt and pass them to his adopted son [7]; the purchaser or the heir stands in every way in the same respect towards the landlord as the original tenant did [8]. When the latter dies without heirs, the lands revert to the former [9]. In the *Mulgeni* chits now executed, conditions against alienation are inserted. When the tenant is evicted, he is entitled to compensation for improvements made by him [10].

Nair mulgeni and shud mulgeni.

Mulgeni tenancies were divided into *Nair mulgeni* and *Shud mulgeni*. *Nair Mulgeni* is derived from the tenants having held of the *nairs* who were in former times the masters of the country, but the more common opinion derives it from the agricultural services which gave the right of ploughing, the word *nair* signifying a plough [11]. The description of the *nair mulgeni* given by the select committee in the Fifth Report [12] is wrong, as it applies to

[1] *Wilson*, 354.
[2] *Ibid*, 162.
[3] *Fifth Report*, II. 78.
[4] *Vidyapurna Tirthaswami* v. *Uggannu*, 34 Mad. 231; *Basu Kumthy* v. *Venkamma Hegadathi*, 9 M. L.T. 355.
[5] *Fifth Report* II, 456, 472, 481.
[6] *Ibid*.
[7] *Ibid*, 472.
[8] *Ibid*.
[9] *Ibid*, 78, 456, 481.
[10] *Ibid*, 78, 472.
[11] *Ibid* 468.
[12] II. 77.

mulawarg and not to *nair mulgeni* [1]. *Shud mulgeni* is a tenure by simple purchase [2]. Wilson [3] says what is intended by *shud* is not verifiable, unless it be *suddh*, pure, simple. *Nair mulgeni* is more ancient and more secure than the other.

Rights of mulgeni tenants.

There is no presumption that a tenancy is either *mulgeni* or *chalgeni* [4], and when a tenant proves immemorial possession [5], and even possession for forty years [6], the presumption is in favour of *mulgeni*. A *mulgeni* tenant being only a tenant in perpetuity, the law applying to an occupancy tenant does not apply to him [7], and therefore he is not entitled to cut timber or fruit trees standing at the date of the grant [8]. But in the absence of a prohibition in the lease, he is entitled to cut and appropriate trees in the holding planted by him or of spontaneous growth [9].

Vaidageni.

Leases for terms of years are known in South Canara as *Vaidageni*. Both with this and the *mulgeni*, it is not infrequent to have a progressive rate of rent. This is especially common when the lease is of land, which it is proposed to plant up as a cocoanut garden and the tenancy is then called *Nadugi* in the northern part and *Kuikanom* in the southern part [10].

Permanent tenants in Tamil districts.

In the Tamil districts permanent and temporary tenants are known by certain names, and it is not safe to attach too much weight to the meaning of words alone, which may not have the same meaning at different times and different places [11]. Permanent tenants are known as *Resident payakarries*, *Ulkudi payakarries* or *Ulkudis* in the Chingleput District and as *Ul-purakudis*, *Ullur*

1 *Wilson*, 354; *Vyakunta Bapuji* v *The Government of Bombay*, 12 Bom. H. C. R. app. 1 (79).

2 *Fifth Report*, II. 468.

3 *Glossary*, 354.

4 *Kittu Hegadthi* v. *Channamma Shettathi*, 30 Mad. 528.

5 *ibid.*

6 *Raghava Charlu* v. *The Secretary of State*, (1915) M. W. N 271.

7 *Gangamma* v. *Bhomakka*, 33 Mad. 253.

8 *Gangamma* v. *Bhomakka*, 33 Mad. 253; *Latifa Bibi* v. *Narayana Chari*, 17 M. L. T. 202: *Krishna Charya* v. *Anthakki*, 29 M.L.J. 314.

9 *Krishnacharya* v. *Anthakki*, 29 M.L.J. 314.

10 *South Canara Dt. M.* 131

11 Per *Kindersley, J* in *Krishnasami Pillai* v. *Varaduraja Ayyangar*, 5 Mad. 345; *Mayandi Chettiar* v. *Chokkalingam Pillai*, 27 Mad 291: 31 I. A. 83, reversing *Chokkalingam Pillai* v. *Mayandi Chettiar*, 19 Mad 485.

purakudis, *Purakudi-uls* or *Ulkudis* in the Tanjore District. When the owners of lands were unable to cultivate all their lands either through sex, age or other causes, they called in the aid of others to cultivate them. The latter might have been unwilling to cultivate, unless a permanent right in the lands was given to them, which was accordingly done; or it might have been claimed by them from having cultivated the same land for generations, or granted to them as an inducement to bring into cultivation the hitherto uncultivated lands.

Rights of Ulkudi tenants.

Ulkudi means "a cultivator, who, though not a proprietor, has inherited the land he cultivates, and cannot be dispossessed as long as he pays the stipulated rent" [1]. In the Chingleput District they have a sort of life interest in the lands they cultivate [2], and cannot be dispossessed of them as long as they pay the accustomed rent [3]. They cannot sell, mortgage or transfer for valuable consideration their lands [4]. Their heirs succeed to them and in default of them the lands revert to the landlord [5]. They do not participate in the fees and privileges of the mirasidars, to whom on the contrary they pay fees. Though they have got a hereditary right to their holdings, they are not occupancy tenants, as they have not the right of alienation [6]. In the Tanjore District also they have a hereditary [7] and inalienable right to their holdings [8].

Sukhavasi tenants.

Permanent tenants are known also as *Sukhavasi* tenants. A *Sukhavasi* tenant literally means "one not bound to any particular spot by the possession of houses or lands, but lives comfortably by trade or industry [9]." Though in their origin *Sukhavasi* tenants were only temporary tenants as their name implies, in later times they acquired the status of permanent tenants. Thus they are classed as *ulkudis* having a permanent right to their holdings without power, however, to sell

[1] *Wilson*, 400.
[2] *Mirasi Papers*, 9. 32, 59.
[3] *Ibid*, 214. 218, 380.
[4] *Ibid*. 46. 48, 191. 214, 218.
[5] *Ibid*. 47, 214, 217.
[6] *Chinnan* v. *Kondam Naidu*, 26 M. L. J. 169.
[7] *Mirasi Papers*, 96.
[8] *Mahomed Meera Levvai Maracayer* v. *Ramalingam Pillai*, (1911) 1 M. W. N. 84.
[9] *Wilson*, 492; *Mirasi Papers*, 59.

them without the mirasidar's consent [1]. They are entitled to compensation for the loss of their interest when their holdings are taken up by Government under the Land Acquisition Act [2], and cannot be ejected by the mirasidar [3].

Temporary tenants in South Canara.

Temporary tenants in South Canara are known as *Chalie gaini* or *chalgeny* tenants, who are tenants at will [4]. The tenancy is usually allowed to descend from father to son at the original rent agreed upon, but the landlord has got the right to raise the rent or oust the tenant [5]. The latter is entitled to compensation for everlasting improvements made by him before he is evicted [6].

Temporary tenants in Tamil Districts.

Such temporary tenants are known as *parakudi payakarries* or *parakudis* in the Chingleput District and *purakudis* or *Anyakudis* in the Tanjore District. *Payakari* is derived from *payir-kari* or *karan i.e.* one who cultivates [7] and means "a temporary cultivator, one who cultivates the land of another for a stipulated term and a given share of the crop" [8], and a *purakudi* means, "a migratory or non-resident cultivator, one whose home is another place, one not a member of the village community and having no proprietary rights, but holding and cultivating lands in the village either for a stipulated term or at pleasure[9]". They are only temporary cultivators who cultivate the lands of another either for one or more years but mostly for a stipulated term, and a given share of the crop, which is known as *purakudy-waram*. Their rights are never hereditary nor transferable by sale or otherwise and unless special agreements are entered into, cease with the year [10]. The word *purakudi prima facie* means cultivators without occupancy rights[11]. The word *Ulavadai* means "the act of ploughing: the right to

[1] *Appaswami Mudaly* v. *Rangappa Nattan*, 4 Mad. 367.

[2] *ibid.*

[3] *Chellappa Nattan* v. *Streenivasa Raghava Chary*, 1 M.L R. 28.

[4] *Wilson* 99; *Fifth Report* II. 78, 468.

[5] *Fifth Report* II. 473, 481.

[6] *ibid* II. 78, 473.

[7] The other derivation is from pai, the foot and karidan to labour, *Mirasi papers*, 59; this derivation may now be taken to be wrong, *Mirasi Papers*, 213, 380.

[8] *Wilson*, 412, *Mirasi Papers*, 93, 96

[9] *Wilson*. 400; *Mirasi Papers*. 96.

[10] *Mirasi Papers*, 10, 46, 59, 93. 96, 137, 191, 213, 216, 380.

[11] *Krishnasami Pillai* v. *Varadaraja Ayyangar*, 5 Mad. 345; *Thiagaraja* v. *Gyana Sambanda Pandara Sannadhi*, 11 Mad. 77; *Mayandi Chettiar* v. *Chokkalingam Pillai*, 27 Mad 291; 31 I. A. 83.

cultivate the land" [1] and does not create a permanent right of occupancy [2]. The words *Ulavadai mirasidars* have no established meaning [3]. The word *kudimiras* implies occupancy right ; *asal grama purakudi*, absence of it ; and *ullur purakudi*, an inalienable occupancy right [4]. A refusal to perform *purakudi* service renders the *purakudi* tenant liable to be ejected without notice [5]. In Dindigul and Coimbatore, residents ryots having no hereditary or proprietary right to the lands they cultivated were known as *Veliaversey* ryots [6], and non-resident ryots as *Yerwaddies* [7]. Instead of employing a *purakudi* who is paid by a share of the produce, the owners of land employ labourers paid wages in grain,whc are known as *pannaials*, *pannai karans* or *padials*. The *Pungal* system in the Pollachi Taluq of the Coimbatore District is somewhat similar. It is described thus "If the ryot employs a *pungal* to cultivate his fields, it is only when the latter is able to contribute plough-bullocks to some extent. The produce is divided into two portions, of which one-half goes to the ryot as *Nilavaram*. The remaining half is divided between the ryot and the *pungal* according to the number of plough-bullocks contributed by each [8]."

---

[1] *Wilson*, 534.

[2] *Rangaswami Reddi* v. *Gyana Sambanda Pandara Sannadhi*, 22 Mad. 264.

[3] *Mayandi Chettiar* v. *Chokkalingam Pillai*, 27 Mad. 291· 31 I. A. 83.

[4] *Mahomed Meera Levvai Marakayar* v. *Ramalingam Pillai*, (1911) 1 M. W. N. 84.

[5] *Ramasami Chettiar* v. *Kathan Chettiar*, 28 I. C. 915.

[6] *Fifth Report* II. 494; *Ibid, Glossary* XLIX; *Wilson*, 561.

[7] *Fifth Report* II. 494; *Ibid, Glossary* l; *Wilson*, 561.

[8] *Srinivasa Raghava Iyengar's Progress*, 149.

CHAPTER XII.

CONSTRUCTION OF GRANTS AND LEASES.

(a) GRANTS.

Rules of construction.

The general and perhaps the best rule in the construction of grants is to construe each grant according to its words and decide each case on its merits. There are however, as observed by the Privy Council in *Lalit Mohun Sing Roy* v. *Cherkkun Lal Roy* [1], two cardinal principles in the construction of wills, deeds and other documents, namely first, that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention and secondly, that technical words or words of known legal import must have their legal effect even though the executant uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. Instruments in India not being drawn up by professional people, should be liberally construed [2]. They ought to be construed in a way as to make them legal [3] and to bring all their several provisions into harmony with one another [4]. It has been stated as a general proposition that ancient grants may be explained by modern user [5], but this can be done only if there is an ambiguity in the grant [6]. As between private parties a doubtful grant is to be construed

[1] 24 Cal. 834 : 24 I. A 76.

[2] *Ram Moni Dasi* v. *Ram Gopal Saha*, 12 C. W. N. 942.

[3] *Bijoy Krishna Karmakar* v. *Ranfit Lal Karmakar*, 38 Cal. 694 (699).

[4] *Ananda Prasad Mukhopadya* v. *Mathura Nath Nag Mazumdar*, 9 C. L. J. 585 (589).

[5] *Nityahari Roy* v. *Dunne*, 18 Cal. 652 (658).

[6] *Kulada Prasad Deghoria* v. *Kalidas Naik*, 20 C. L.J. 212.

in favour of the grantee [1] and this rule does not apply to construction of grants between the Crown and the subject which has already been dealt with [2]. The rights of parties to a contract are to be judged by their intention at its datê and by that law by which they intended or may justly be presumed to be bound, and this rule can only affect the parties to the contract and not strangers nor deprive them of their statutory rights [3]. The construction placed upon an instrument by a court of law or equity is not binding upon another Court as regards the construction of another document couched in somewhat diffeient language, when it is not part of the same transaction [4]. Generally the name given by the parties to a document is not conclusive as to its nature; but it cannot be lost sight of when the document is ambiguous and is susceptible of more than one interpretation as to its title and scope [5]. Any improper construction put upon a deed by a party to it cannot be allowed to prejudice his rights upon its true construction [6]. An earlier document is not to be construed by reference to a later document which is not between the same parties [7]; nor is an ancient document to be construed in the light of present usages or modern understanding of the law [8]; nor is it allowable to read into an agreement a section in an Act subsequently passed [9]. The misapprehension of the parties that a zemindary was impartible when it was really partible cannot make it partible or alter the legal course of descent [10].

[1] *Higgins* v. *Nobin Chunder Sen*, 11 C. W. N. 809; *The Secretary of State* v. *Forbes*, 16 C. L. J. 217; *Bhoja Haridas Adhikari* v. *Bhagabati Dasi*, 18 C. L. J. 48.

[2] *ante*, Chapter VI. p. 100.

[3] Per *Oldfield, J.* in *Puchakayla Jagganaikulu* v. *Manager, Nandigam estate* (1914) M. W. N. 939.

[4] *Nurjahan Begum* v. *Faghpur Mirza*, 3 A. L. J. 64 (P.C.); *Dhanukdhari Singh* v. *Nathima Sahu*, 11 C. W. N. 848; *Sitaramji* v. *Jadunath Singh*, 24 I. C. 72.

[5] *Kalabhai* v. *The Secretary of State*, 29 Bom. 19 (28).

[6] *Hussein Khanam* v. *Ali Husain Khan*, 4 A. L. J. 375.

[7] *Baneswar Mukerji* v. *Umesh Chandra Chackrabarti*, 37 Cal. 626; *Chandra Kumar Singh Roy* v. *Kali Prosad Chuckerbutty*, 9 I. C. 223.

[8] *Nemai Chandra Bose* v. *Mahomed Basir*, 9 C. L. J. 475.

[9] *Thakur Ganesh Baksh* v. *Thakur Harihar Baksh*, 26 All. 299. 31 I.A. 116.

[10] *DeviGaru* v. *Lakshmi Suryanarayana Dhatrazu Bahadur Garu*, 20 Mad. 256 (P. C.)

Application of contemporanea expositio.

Contemporanea expositio as a guide to the interpretation of documents may be resorted to [1]. In *Raghojirao Saheb* v. *Lakshmanrao Saheb* [2] it was pointed out that the application of the principle was often attended with great danger and that great care must be taken in its application and that it was legitimate to have recourse to it when the document was ambiguous and the ambiguity covered the geographical and pecuniary extent of the grant. A statement contained in a contemporaneous document between the same parties furnishes a legitimate aid to construction [3]. Aid may also be sought for in the surrounding circumstances and the occasion on which and the object for which the grant was made [4]. The conduct of the parties in having allowed the grantee's heirs to enjoy the property after his death was taken into consideration by the Privy Council in deciding whether the grant was limited to the grantee's life or not [5]. The evidence of surrounding circumstances and the subsequent conduct of the parties can only be resorted to when the grant is ambiguous [6], and subsequent conduct, though it may throw light upon the nature and origin of the tenancy cannot be taken to affect its terms [7]; but where the terms of a grant are unambiguous, the nature of the tenancy cannot be altered by the subsequent conduct of the parties [8]. The subsequent conduct of the parties may alter the nature of the tenancy for the benefit of under-tenants, but in no event can it prejudice them [9].

[1] *Abhiram Goswami* v. *Shyama Charan Nandi*, 36 Cal. 1003 : 36 I. A. 148; *Raghojirao Saheb* v. *Lakshmanrao Saheb*, 36 Bom. 639: 39 I. A. 202.

[2] 36 Bom. 639 : 39 I A. 202.

[3] *Durga Prasad Singh* v. *Rajendra Narain Bagchi*, 37 Cal. 293 (310).

[4] *Gulabdas Jagjivandas* v. *The Collector of Surat*, 3 Bom. 136 : 6 I. A. 54. *Dosibai* v. *Ishwardas Jagjivandas*, 9 Bom. 561, affirmed on appeal *Dossibai* v. *Ishvardas Jagjivandas*, 15 Bom. 222; 18 I. A. 22.

[5] *Lekhraj Roy* v. *Kunhya Singh*, 3 Cal. 210: 4 I. A. 223.

[6] *Christian* v. *Tekaitini Narbada Kunwari*, 9 C. L. J. 421; *Midnapore Zemindary Co. Limited* v. *Bamapada Roy*, 13 C. L. J. 485; *Hedayet Ali* v. *Kamalanand Singh*, 17 C. L. J. 411; *Kulada Prasad Deg Woria* v. *Kalidas Naick*, 20 C. L. J. 212.

[7] *Baidya Nath Mondal* v. *Sudharam Misri*, 8 C. W. N. 751.

[8] *Promotho Nath Kumar* v. *Nilmani Kumar*, 14 C. L. J. 38 : contra, *Midnapore Zemindary Co. Limited* v. *Sham Lal Mitter*, 15 C. W. N. 218.

[9] *Mahesh Jha* v. *Manbharan Mia*, 5 C. L. J. 522.

Particular grants.

A grant of income or of rents and profits conveys an interest in land [1]. A grant in these terms, "Building a house, I shall have no right to sell the ground to another" is not a grant of any interest in the land and the word "sell" includes an alienation of any kind, such as mortgage or lease [2]. A grant of land as a present for the purpose of planting a garden, containing no words making it descendible to the heirs of the grantee nor expressly limiting it to his life is only one for his life [3]; similarly also is a grant made subject to faithful service [4]. Where the object of the grant is the maintenance of the grantee, it ensures only for his life and is not extended by the use of the terms "*hamesha*" (for ever) [5] or "*as proprietor*" [6]. When lands adjoining a highway or river is granted, the half of the road or half the river is presumed to pass, unless there is something either in the language of the deed, or in the nature of the subject matter of the grant, or in the surrounding circumstances, sufficient to rebut the presumption; and this though the measurement of the property which is granted can be satisfied without including the half of the road or half of the bed of the river; and although the land is described as bounded by a river or road, and notwithstanding that the map which is referred to in the grant does not include the half of the river or the road. The above rule of English law was applied to India by the Allahabad High Court in *Balbir Singh* v. *The Secretary of State* [7], but such application was doubted by *Sadasiva Ayyar, J.* [8] and *Oldfield J.* [9] of the Madras High Court. A permanent sanad granted to the zemindar of Singampatti in 1802, after containing the usual recitals one of them setting forth that the object of the grant was to confer upon the zemindar and his

[1] *Christian* v. *Tekaitini Narbada Kunwari*, 9 C. L. J. 421.
[2] *Rajlakar* v. *Narayanbhat*, 3 Bom H. C. R. (a. c. j.) 63.
[3] *Syed Mahammad Khan* v. *Maharajah Ram Narain*, 7 C. L. J. 90.
[4] *Ibid.*
[5] *Aziz-un Nissa* v. *Tassaduq Hussain Khan*, 23 All. 324; 28 I. A. 65.
[6] *Ramashar Bakhsh Singh* v. *Arjun Singh*, 23 All. 194; 28 I. A. 1.
[7] 22 All. 96
[8] *Menakshi Amma* v. *The Secretary of State*, 26 M. L. J. 385 (404) *The Secretary of State* v. *Jan akiramayya*, 29 M. L. J. 389 (420).
[9] *The Secretary of State* v. *Janakiramayya*, 29 M. L. J. 389 (400)

successors "a permanent property in their land for all time to come" contained no specification or description of the lands which it was contended to convey but stated in general terms that the zemindary as then held and possessed by the grantee. There was a marginal note specifying the names of three villages then comprising the zemindary. It was suggested before the Privy Council that the effect of the marginal note was to limit the grant to those three villages but the Privy Council held that a marginal description of the villages existing at its date could not control the plain terms of the grant or be taken as definitive of the extent of the land, cultivated or not, which was held and possessed by the zemindar of the villages enumerated, and that he was entitled to all lands which he could show either by direct evidence or as a matter of reasonable inference as being held and possessed by him at the time he obtained the permanent settlement[1]. In consequence of a rebellion in 1799 in which the zemindar of Parlakimedi took part, the government in 1800 declared that the zemindary was forfeited and that the Bissoyis were thenceforward to pay their revenue directly to the Collector and to be for ever under the Company's immediate authority. It was also then declared that the Government would in due course restore the zemindary to his son with the exception of the lands held by the Bissoyis. These Bissoyis held the Maliahs as service tenure in respect of which they paid kattubadi to the zemindar and besides the Maliahs they held other lands which they occupied and cultivated for their own support. In the regrant of the zemindary in 1803 the lands excepted were variously described as "lands held by the Bissoyis," "possessions of the Bissoyis," "all lands and russooms or fees heretofore appropriated to the support of the police establishments." The zemindar raised the contention that the exception

[1] *The Secrētary of State* v. *Sivasubramania Thevar*, 15 Mad. 101: 18 I. A. 149; affirming *Sivasubramania* v. *The Secretary of State*, 9 Mad. 285.

related only to the lands occupied and cultivated by the Bissoyis and not to the Maliahs but the Privy Council overruled this plea and held that the exception included the Maliahs as well [1]. In the year 1797 the Maharaja of Vizianagaram granted a lease expressed in terms of a pious gift in favor of S of certain lands in the village of C to be held by him and his heirs at a certain quit-rent. Subsequently other villages were given at different times in lieu of the lands in C and finally in 1811the grantor's son conferred on S the village of B at a certain quit-rent to be held by the grantee and his heirs from generation to generation for the satisfaction of Sri. On the death of the grantor the lands were attached and the grantee's son dispossessed. In 1863 the representatives of the grantee presented a darkhast to the zemindar which stated that the village was granted to their grandfather and had been attached and concluded as follows, "In the event of your Highness be pleased......and grant my share of lands in that agrahara, I shall pay the kattubadi fixed by your Highness and be bound by the Cirkar's orders." Upon these darkhasts the Maharaja issued an order to each of the petitioners which differed only in the amount of rent, the total rent now being raised from Rs. 41 under the grant of 1811 to Rs. 253-6-7 and concluded as follows "you shall accordingly take possession, pay the kattubadi every year and be bound by the cirkar's orders." Thereupon each of the petitioners executed a sanad engaging to pay the rent and act up to the orders of the sirkar. Subsequently the zemindar tried to eject them treating them as tenants from year to year. The Privy Council agreeing with the High Court negatived this view and held that the grant of 1863 was a grant of an estate, in all respects, save the grant of quit-rent, similar in tenure to that which had been granted in the year 1811, namely a tenure in perpetuity and observed that, when the Maharaja ordered that the grantees were to take possession and ordered it to be given to them, he intended that they should hold it at the increased rent in the

[1] *Raja of Parlakimedi* v. *The Secretary of State*, 28 Mad., 180 ; 32 I. A. 53.

same manner as they had done before the attachment [1]. Where the Government purchased a mitta sold for arrears of revenue and restored it to the son of the defaulter, the law will imply that the restoration or grant in the absence of a special contract to the contrary will carry with it all the rights of water and other easements of necessity existing at the time of such restoration or grant [2].

Value of orders.

An hookamnamah being only a direction from a government Board or officer to others engaged in the Revenue Department cannot create of itself any new law or impose any new obligation on existing tenures from which they were antecedently free; but it may indicate in many cases subsequent to it the terms of engagements and be proof of conditions of tenure in such cases [3]. The report of the circuit committee appointed by government to the settlement of revenue cannot affect the rights of the mukhasadars as against the zemindar [4]; neither does the permanent settlement with the zemindar affect the right of the jagirdar [5] nor the settlement of the Inam Commissioner with the inamdar affect the zemindar's rights against the latter [6]. But where the plaintiff in taking settlement of certain lands from Government expressly stipulated that he would be bound to recognise the rights of intermediate holders, subordinate holders, raiyats and others recorded in the settlement papers, he is bound to recognise them, even though they are incorrectly registered and had no real existence [7].

Conflict between boundaries and extent.

Where there is a description of land in a conveyance or lease setting forth the boundaries and specifying the area, the land within the boundaries *prîma facie* passes by the

[1] *Vizianagaram Maharaja* v. *Suryanarayana*, 9 Mad. 307: 13 I.A. 32; *Vizianagaram Maharaja* v. *Sitaramaraju*, 19 Mad 100.

[2] *Maria Susai Mudahar* v. *The Secretary of State*, 14 M. L. J. 350.

[3] *Brett* v. *Ellaiya*, 13 M. I. A. 104 (110).

[4] *Venkata Narasimha Appa Rao* v. *SobhanadriAppa Rao*, 29 Mad. 52 (57) 33 I. A. 46; affirming *Sobhanadri Appa Rao* v. *Venkata Narasimha Appa Rao* 26 Mad. 403 (409).

[5] *Forbes* v. *Meer Mahomed Tuquee*, 13 M. I. A. 438 (460).

[6] *Sobhanadri Appa Rao* v. *Gopalkrisinamma*, 16 Mad. 34; *Suryanarayana* v. *Appa Rao*, 16 Mad 40.

[7] *Chandramoni Mohanti* v. *Manmatha Nath Bose*, 11 C. L. J. 68.

deed [1]. The principles governing such cases were elaborately dealt with by *Doss J* in *Durga Prasad Singh* v. *Rajendra Narain Bagchi* [2]. He observed, "The primary canon of interpretation of a deed or grant, where there is a conflict between the description of the boundaries of the land conveyed and the description of the quantity, unquestionably is that the description of the boundaries, if it is precise and accurate, dominates the description of the quantity. On the other hand there is a supplementary canon equally well established, though instances of its application are much less frequent than those of the other, that if the description of the boundaries is vague and uncertain, it yields to the description of the quantity. These two canons are in fact illustrations of, and may be summed up in, a more general principle that where there are two conflicting description of the subject matter of the grant or two conflicting parts of the same description, that which is the more certain and stable, and the least likely to have been mistaken or to have been inserted inadvertently, must prevail, if it sufficiently identifies the subject matter. This, again, is not a rule of law and hence inflexible in its character but a mere rule of construction, which serves as a safe and almost infallible guide in determining the intention of the parties, which is the touchstone of true interpretation. Indeed, it is all controlling and predominates over all elements of description of the subject matter". But it is only when the boundaries can be ascertained with perfect certainty that it is permissible to infer that the intention was to convey to the grantee all the lands comprised with the boundaries; and where they are uncertain, then the description by extent prevails [3]. Where the boundaries are of a shifting character and the property leased is liable either to diminish or increase by process of

[1] *Sheeb Chunder Mahmeeah* v. *Brojonath Adithyu*, 14 W. R. 301; *Ananda Prosad Mukhopadya* v. *Mathura Lal Nag Mazumdar*, 9 C.L.J. 585.

[2] 37 Cal. 293 reversed on facts by the Privy Council, *Durga Prasad Singh* v. *Rajendra Narain Bagchi*, 41 Cal. 493: 40 I. A 223; *Pemmaraje Venkiah* v. *The Secretary of State*, (1910) M.W.N. 456; *Zemindar of Pachipenta* v. *Maharaja of Jeypore*, 23 M. L. J, 97.

[3] *Kumar Rameshar Maha* v. *Ram Tarak Hazar*, 14 C. W. N. 268.

accretion, as in the case of lankas, the description by area governs the deed [1].

(b) LEASES.

Construction of leases.

Where there is a document creating a lease, the question reduces itself to one of construction of words therein. In construing them regard must be had to surrounding circumstances and one of them is what possession was given by the lessor and accepted by the lessee [2]. The counterpart of a lease may be looked into for the purpose of interpreting it [3]. A lease in favour of a man for an indefinite period enures only for his life and passes no interest to his heirs, unless there are some words showing an intention to grant a hereditary interest. But this rule does not apply when the term is fixed or can be definitely ascertained by referring to the interest which the grantor himself has in the property [4]. Where no term is fixed in the lease and the lessee is given the option of holding as long as he pleases, it is determined by the death of the lessee [5]. The words "you are to enjoy, you and your sons and grandsons from generation to generation," create an alienable interest in perpetuity at a fixed rent; but not the words " you must pay every year government dues...besides the fixed amount, there will be no oppression on account of cesses " [6]; "so long as the rent is paid, I shall have no power to resume the land" [7]; " both of you shall together pay the chavadi (land tax) money and deliver jwari grass...from year to year, have peaceful enjoyment" [8].

Mokurari and istemrari.

The words *istemrari* and *mokurari* are both of Arabic origin and literally mean continuous (running) and fixed [9]. Though the word *mokurari* used alone may import perpetuity, that is not the necessary meaning

[1] *Pemmaraje Venkiah* v. *The Secretary of State*, (1910) M.W.N. 456.

[2] *Janakee Nath* v. *Mahomed Ismail*, 22 W. R. 285.

[3] *Ramayya* v. *Krishnaswami*, 23 Mad. 114.

[4] *Lekhraj Roy* v. *Kunhaiya Singh*, 3 Cal. 210 : 4 I. A. 223.

[5] *Vaman Shripad* v. *Maki*, 4 Bom. 424.

[6] *Nanga Bai* v. *Kalapa Dari Mukrya*, 9 Bom 419.

[7] *Saya* v. *Ram Jiwan Singh*, 8 All 569.

[8] *Ramabai Saheb Patwardham* v. *Babogi*, 15 Bom 704; See also, *Khuda Baksh* v. *Sheo Din*, 8 All 405.

[9] *Agin Bindh Upadya* v. *Mohun Bikram Shan*, 30 Cal. 20 (29).

of the term [1]; similarly also the word *istemrari* [2]. The combination of the two words *istemrari mokurari* may mean permanent during the life of the person to whom the lease is granted or permanent as regards hereditary descent [3], and the Privy Council observed that this doubt was not removed by the lexgraphical meaning of the words [4]. The words therefore do not *per se* convey an estate of inheritance [5], though coupled with usage they may be herediditary [6]. The analogy of the construction placed on the words *istemrari mokurari* in Bengal was adopted in Madras and it was held that the words "*Saswatam*" (fixed, permanent) [7] and *Kayam patta* (perpetual lease) [8] did not *per se* convey a hereditary interest in the absence of words to that effect. But in *Foulkes* v. *Muthusami Goundan* [9] where the word used was *Saswatamayi*, the adverbial form of *Saswatam* used in *Rajaram* v. *Narasinga*,[10] in an agreement as to the rate of assessments, it was held that the word *Saswatamayi* or *enranraikkum* denoted perpetuity and conveyed an estate of inheritance, the basis of the decision being that these words had not acquired the restricted meaning which the words *istemrari mokurari* had obtained in Bengal. The words "permanent," "you and your heirs" used in documents relating to the settlement of the assessment and the swamibhogum due to a temple in respect of ryotwari lands do not convey a permanent right[11].

Saswatam, Kayam patta.

Enranraikkum.

---

[1] *Sheo Pershad Singh* v. *Kally Dass Singh*, 5 Cal. 543; *Bilasmoni Dasi* v. *Raja Sheoprasad singh*, 8 Cal 664 : 9 I. A. 33; *Permeswar Pertab Singh* v. *Padmanand Singh*, 15 Cal. 342.

[2] *Gaya* v. *Ram Jiwan Singh*, 8 All 569.

[3] *Lilanund Singh* v. *Munorunjun Singh*, I. A. Sup. Vol. 181 : 12 Ben. L. R. 124, overruling *Munoranjun Singh* v. *Lilanund Singh*, 3 W. R. 84; *Lilanund Singh* v. *Monorunjan Singh*, 5 W. R. 101.

[4] *Tulshi Pershad Singh* v. *Ram NarainSingh*, 12 Cal. 117 (130): 12 I. A. 205.

[5] *Lilanund Singh* v. *Munorunjun Singh*, I. A. Sup. Vol. 181; 12 Ben. L. R. 124; *Tulshi Pershad Singh* v. *Ram Narain Singh*, 12 Cal. 117: 12 I. A. 205; *Beni Pershad Koeri* v. *Dudhnath Roy*, 27 Cal. 156; *Agin Bindh Upadya* v. *Mohun Bickram Shah*, 30 Cal. 20; *Narsingh Dyal Sahu* v. *Ram Narain Singh*. 30 Cal. 383.

[6] *Lilanund Singh* v. *Munorunjun Singh*, I. A. Sup. Vol. 181 : 12 Ben. L. R. 124.

[7] *Rajaram* v. *Narasinga*, 15 Mad. 199.

[8] *Venkataramanna* v. *Venkatapathi Nayani*, 28 M. L. J. 310.

[9] 21 Mad. 503.

[10] 15 Mad. 199.

[11] *Muthuvelu Pillai* v. *Aiyasami Naick*, (1910) M.W. N. 579.

CHAPTER XIII.

MALABAR LAND TENURES.

Their features.

As the tenures found in Malabar have incidents peculiar to them, I have dealt with them in a separate Chapter. It has been explained in a former Chapter that the proprietors of land in Malabar are known as *jenmakars*, *jenmis*, or *mutalalans* [1]. It is a common feature of tenancies in Malabar that in the absence of an express prohibition, the tenant has got the right to sell or subdivide his holding [2], and it is very difficult to draw a distinction between a mortgage and a lease. The fundamental distinction is between tenures which are and which are not resumable by the *jenmakar*. There is also a distinction between tenancies which are created of the usufruct of the soil and tenancies which are created of the *jenm* or proprietary right [3].

Verumpattom.

The simplest form of transfer is the *Verumpattom* or simple lease, called also *Verumkari* or *Verumkolu*, which is a lease unaccompanied by an advance. Its incidents are thus described by the *Sudder Court* in its proceedings No. 18 dated 5th August 1856: "This lease runs only for a single year, unless otherwise specified. At the end of the year, the landlord is at liberty either to renew the lease or to let the land to another tenant; but he cannot, under any circumstances, disturb the tenant in his enjoyment until the year has expired. Where the lease is for a specific period, the tenant cannot be ejected during that period, unless he endeavour to defraud the landlord or allow the rent to fall into arrears. In either of these cases, however, an action of ejectment will lie against the tenant." Under this form of letting, the tenant after deducting the

[1] *Ante*, Chapter II. 35.
[2] *Minute*, 37.
[3] *ibid.*

bare cost of seed and cultivation, pays the whole of the estimated net produce to the landlord [1]. It is thus really a lease on rack-rent. Having some interest in the land, a *verumpattom* tenant claiming under a lease from an ottidar can redeem a prior kanom [2].

Kanompattom.

Kanompattom is a kind of *verumpattom* under which one-third of the net produce after deducting the cost of seed and cultivation, is retained by the tenant and the remaining two-thirds are paid to the landlord. The aim of the tenant will therefore be to convert his *verumpattom* into *kanompattom* as it gives him greater interest in the tenure [3].

Munpattom.

Munpattom, known also as *Talapattom* or *Kattakanom*, is a lease in which a year's rent is paid in advance at the commencement of the tenancy. On the determination of the lease, the advance must be refunded [4]. It is a simple lease enuring for a period of one year, the advance being only to ensure regular payment of rent and for the due fulfilment by the tenant of his part of the contract. In default of payment of rent, the lessor is at liberty to appropriate the advance towards the arrears of rent due and must refund the balance, if any. The deposit carries no interest. This lease is termed *Patta Pidipathu* in the Cochin Taluq.

Melpattom.

A lease of trees enuring for a single year unless some other term is fixed is known as *Melpattom*. It does not authorise the tenant to do anything in the soil upon which the trees stand.

Kulikkanom.

Kulikkanom is a reclaiming lease for planting. It differs from the *kanom* in that no advance is made to the landlord but like the *kanom* enures for twelve years if no term is fixed [5]. The tenant pays no rent for the first twelve years unless a rent is expressly reserved and it can be transferred or mortgaged. But in the event of the tenant failing to reclaim the land, plant trees or otherwise fulfil the conditions of the lease, or in the event of his setting up a fraudulent title to the land, the landlord may dispossess him

[1] *Moore*, 191.
[2] *Paya Matathil Appu* v. *Kovamel Amina*, 19 Mad. 151.
[3] *Moore* 192.
[4] *Ibid.*
[5] *Moore* 195.

before the expiry of the stipulated period [1]. Though under the customary law of Malabar a *kulikkanom* lease enures for twelve years, it is not determined at the end of the period and consequently a suit to recover the land brought more than twelve years after that date is not barred by limitation [2]. Under the Malabar common law governing the rights between landlords and their *kulikkanom* tenants, a right to deduct the value of trees wrongfully cut by the tenant during the twelve years' term from the value of the improvements due to the tenant vests in the landlord [3].

Verumpatta-Kulikkana.

Verumpatta-Kulikkana, or *Kutiyiruppu* is akin to *kulikkanom* and is common only in the Calicut Taluq. The customary law of Malabar attaches to it all the incidents of *kulikkanom*.

Kulikkanom pattom.

Kulikkanom pattom is a lease by which the tenant binds himself to pay a stipulated rent as well as to bring new lands into cultivation. It differs from *kulikkanom* in that it pays a stipulated rent from the date of lease, but like *kulikkanom* enures for a period of twelve years, if no term is fixed and is forfeited in the event of the tenant failing to improve the land or attempting to defraud the landlord's title [4].

Kanom Kulikkanom.

Kanom Kulikkanom is a lease of waste land for the purpose of making improvements and the landlord receives from the lessee pecuniary consideration for the lease. The tenant cannot be disturbed for twelve years or during any other period stipulated in the lease. Having a pecuniary interest in the lease, the lessee cannot be ejected for neglect to improve the lands but can be ejected if he sets up a title adverse to the landlord [5].

Kuttikkanom.

Kuttikkanom is a mortgage of a forest, by which the landlord assigns a tract of forest, receiving a stipulated fee for every tree felled by the mortgagee, the entire number of trees to be cut down, and the period within which they are to be cut being expressly fixed in the *karar* entered into between the parties. The mortgagee

1 *Proc. Sud. Court.*

2 *Kelappan* v. *Madavi*, 25 Mad. 452.

3 *Pumpatlia Venkatia* v. *Kunhamina*, 25 I.C. 704.

4 *Pro. Sud. Court.*

5 *Ibid.*

usually makes an advance and agrees to pay the balance by instalments. The non-payment of the stipulated instalment does not render the mortgagee liable to dispossession, unless there is a special clause in the agreement to that effect. The instalment may be recovered by action but the mortgagee remains in possession [1].

Perpetual leases.

Perpetual leases:--The generic name for perpetual leases is *saswatam*. They owe their origin, probably to the unwillingness of the jenmis to part with the full proprietary title and were granted with or without reservation of rent either in consideration of a present money payment or in recognition of services rendered or as a reward for services to be rendered [2]. The grant, if made, to a Brahmin in termed *Brahmasvam*; if made to a non-Brahman, of caste equal to or higher than the grantor, it is called *Anubhavam or Saswitam*; and if some nominal rent or right to renewal fee is reserved, *Karamkari or Jenmam koru*; and if made to a person of inferior caste, *Adima or Kudima*. Grants of temple land on service tenure are termed *Karaima*.

Santhathi Brahmasvam.

Grant to Brahmans are made in the form of *Santhathi Brahmasvam*. As its name implies it is a grant to the grantee and his heirs and usually no rent or services are reserved.

Anubhavam.

Anubhavam literally means enjoyment and in Malabar conveyances invariably means perpetual enjoyment and hence a perpetual lease and is irredeemable as long as it remains in the grantee's family and resembles an *inam* on the east coast [3]. The term may be used with reference to a tenure of land or to a specified money or grain-rent charged on the land. In the former case it will *prime facie* import an irredeemable tenure; and in the latter case the allowance will be perpetual, but not the tenure [4]. But if the amount of the grant is not specified and the terms of the document indicate that only

[1] *Pro. Sud. Court,*

[2] *Minute* 39 ; *Moore*, 195.

[3] *Theyyan Nair* v. *Zamorin of Caticut*, 27 Mad. 202.

[4] *Vaithilingam Pillai* v. *Kuthiravatta Nair*, 29 Mad. 501; *Mana Vikrama* v. *Gopalan Nair*, 30 Mad 203.

a fixed rent is reserved to the grantor and the rest of the produce given as *anubhavam* an irredeemable tenure is created [1]. It is described by the *Sudder Court* thus: "It is a grant of land made by princes for the maintenance of the position of the grantee. It was customary for princes, when conferring title on any person to grant him at the same time sufficient land to enable him to maintain the dignity of his position. Grants under this tenure were also bestowed upon persons for special services rendered or for the future performance of certain services. The tenant cannot be ejected except where there are conditions imposed and he fails to fulfil them; but on the other hand he and his heirs have only the right of enjoyment and cannot alienate their title. A trifling annual fee is generally paid to the landlord to show that he has the proprietary right." An alienation of lands held on this tenure by the tenant to a stranger puts an end to it and the land reverts to the grantor, even without an express clause in the grant providing for such re-entry [2]. But a denial of title not addressed to the landlord directly does not work a forfeiture of the tenancy [3].

Karamkuri.

Karamkuri:—The nature of this tenure is described by the *Sudder Court* thus: "In this case the land is made over for permanent cultivation by the tenant in return for services rendered. Where the proprietary title is vested in a pagoda, the grant will be made for future services. In some cases land is mortgaged on this tenure, the kanom mortgagee paying the surplus rent produce to the landlord, after deducting the interest of the money he has advanced. The tenant has, in North Malabar, only a life interest in the property which at his death reverts to the landlord. In the South the land is enjoyed by the tenant and his descendants, until there is a failure of heirs, when it reverts to the proprietor. Except when the land is granted for special services, an annual rent is payable under this tenure. The tenant's right is confined to that of cultivation but it is permanent and he cannot be ousted for arrears of rent, which must be recovered by action, unless there

[1] *Vythilingam Pillai* v. *Kuthiravatta Nair*, 29 Mad. 501.

[2] *Ukkandath* v. *Puliyakot Kunhi Kuttan*, 27 I. C. 10.

[3] *Sankaran Nair* v. *Kochappa Menon*, 29 I.C. 427.

be a specific clause in the deed declaring the lease cancelled, if the rent be allowed to fall into arrears." The word means only permanent right of cultivation and non-transferability being one of the incidents of the tenure, an alienation by the tenant puts an end to it and the landlord is entitled to possession and the absence of a clause for re-entry is immaterial [1].

Adima or Kudima.

Adima or Kudima is described by the *Sudder Court* thus : "In this the land is made over in perpetuity to the grantee, either unconditionally or as a mark of favour or on condition of certain services being performed. The terms *Adima* and *Kudima* mean a slave or one subject to the landlord, the grant being made generally to such persons. A nominal fee of two fanams a year is payable to the landlord to show that he retains the proprietary title. Land bestowed as a mark of favour can never be resumed ; but where it is granted as remuneration for certain services to be performed, the non-performance of such services, involving the necessity of having them discharged by others, will give the landlord power to recover the land. The non-payment of the annual rent will form no ground for ousting the grantee, but it will be recoverable by action. The hereditary property of native princes cannot be conferred on this tenure, the ruling princes having only the right of enjoyment during life without power to alienate."

Adimayavana

Adimayavana means an allowance given for service and imports *prima facie* a permanent tenure when granted as a reward for past services or both for past and future services [2]. It is irredeemable as long as it remains in the grantee's family when it was granted for former services [3]. The landlord's right to eject the tenant in *kudima jenmam* demises is limited to cases where the latter omits to perform the services for which they were made, and an assertion

[1] *Achutha Menon* v. *Sankaran Nair*, 36 Mad. 380.

[2] *Theyyan Nair* v. *Zamorin of Calicut*, 27 Mad. 202 ; *Vythilingam Pillai* v. *Kuthiravattah Nair*, 29 Mad, 501 ; *Mana Vikrama* v. *Gopalan Nair*, 30 Mad. 203.

[3] *Theyyan Nair* v. *Zamorin of Calicut*, 27 Mad. 202.

of a *jenm* right by him does not work a forfeiture so as to enable the landlord to eject him [1].

Karaima grants.

Karaima grants are grants of temple lands on service tenure. They are inseparable from service, and on failure of heirs in the grantee's family are resumable by the grantor. They cannot be capriciously determined as long as the grantee is ready and willing to perform the services. But if a *karaima* tenant neglects to perform the services imposed on the tenure and renders the employment of another necessary to performthem, or if he endeavours to set up a proprietary claim in subversion of that of thepagoda, the urallers have a right to maintain as action for ejectment [2]. The lands held on this tenure cannot be sold[3] .

Ari jenm.

Ari jenm is of modern origin and is a kind of perpetual lease of temple lands. The lessee is bound to take a fixed quantity of rice to the temple to be offered to the deity daily and after the usual offerings, he is allowed to take back the cooked rice for his own use [4].

Panayam.

We now comes to mortgages. *Panayam* means simple mortgage with or without possession. In this form of mortgage there is no implied covenant for quiet enjoyment for twelve years but its terms may be similar to those of a *Kanom* [5].

Choondi panayam.

Choondi panayam is simple mortgage without possession.

Thodu panayam.

Thodu panayam is a simple mortgage in which the mortgagor agrees to place the mortgagee in possession of the property mortgaged in case of default of payment of interest according to the stipulation in the deed.

Coodirumpad.

Coodirumpad or Nilamuri is a simple mortgage without possession, but the landlord and the creditor enter into an arrangement by which the latter agrees to receive the rent produce of the land leased to a tenant in lieu of interest on the money due on the loan. Should any dispute arise between the landlord and the tenant whereby rent is not paid to the creditor, the latter can sue the mortgagor.

1 *Thunkunni Achan* v. *Manchu Nair*, 2 L. W. 102.

2 *Proc. Sud. Court. Kanni* v. *Achuda*, 3 M. H. C. R. 380.

3 *Minute*, 40.

4 *Moore*, 194.

Undaruthi panayam is a mortgage which extinguishes itself within a time fixed by the parties. Both the principal and interest will be extinguished by the usufruct and the land will revert to the mortgagor free of encumbrances.

Undaruthi panayam.

Koyu (ploughshare) *panayam* or *kari* (plough) *panayam* is usufructuary mortgage by which the mortgagee retains possession of the mortgaged property and either enjoys its usufruct in lieu of interest or apportions a portion thereof to the interest and accounts for the remainder to the mortgagor.

Koyu or kari panayam.

The nature of a *Kanom* was discussed by a Full Bench of the Madras High Court in *Nellaya Variyath Silpani* v. *Ashtamurthi Nambudri* [1] and was described thus by *Innes, J.* with whom the rest of the Court concurred, "If it were necessary to consider the point referred to the Full Bench, I should hold that, for purposes of *Limitation*, the object for which the tenure was created must be regarded. In some cases it may be a mere lease, a sum being advanced as security for the rent or for proper cultivation, to be repaid on the expiry of the term. In other cases, and most frequently, it is created as a lease by way of mortgage to secure a loan advanced to the Jenmi (proprietor). Rent is payable in the case of every *kanom* but all *kanoms* partake also to a certain extent of the incidents of a usufructuary mortgage. The mortgagee in all such holdings is assumed to be able to derive from the lands placed in his possession enough to pay the interest, at least of the money advanced. The discharge of the principal is not immediately contemplated. The holder of the *kanom*, therefore, pays himself the interest and also pays the Government tax, either directly or through the landlord. The overplus or a certain fixed amount in grain or money is paid to the landlord. If, when viewed scientifically, it cannot be wholly regarded as a mortgage, it certainly cannot be wholly regarded as a lease, as undoubtedly the land enures as security, if not for the principal, at least for the interest of the loan advanced. The *Limitation Act* has no provision specially applicable to

Kanam.

[1] 3 Mad. 382.

tenures of a mixed character, and in most cases it would be obviously improper to apply to such tenures the provisions of article 118 of the second schedule of Act IX of 1871 (the enactment by which the case is governed), and assign to it a limitation of only six years. For the purposes of *Limitation* when, as is alleged in the case before us, it is intended as a mortgage we must apply to it the law of Limitation applicable to mortgages." According to Mr. Wigram it is now too late to apply the test proposed and a *kanom* is defined in *Moore's Malabar Law* [1] to mean "a usufructuary mortgage of immoveable property for the term of twelve years (unless some other term is specified) by the conditions of which a definite share of the estimated produce is reserved for the mortgagee as interest on the money advanced and for payment of the Government revenue and the balance is payable in the shape of rent to the mortgagor." In some cases the *kanom* has been treated as a lease. The true view, however, is that a *kanom* partakes of the nature of both a mortgage and lease.

Meaning of certain terms.

The mortgagee is called the *kanomdar*, and the advance *kanom amount* ; the *kanom* deed *ubhayapattola karanam* ; *kychit* is the counterpart granted by the tenant to the jenmi *marupattam* a copy of the kanom deed, sometimes retained by the jenmi and *michavaram*, called also *micharam or porappad*, for the balance of pattam or rent after deducting mortgage interest; *karanam* or *pramanam* means bonds and agreements of all kinds ; *keikkuli* or *shilakkasu*, a fee, fine or nuzzer of so many fanams on a *pottipadu* which the lessee or *verumpattakaran* gives to the *jenmi* or proprietor upon the renewal of his lease; and *pattam*, the fixed proportion agreed to between a *jenmi* and cultivator to be given to the former as his share or rent which is usually paid in kind for rice cultivation.

Incidents of kanom.

According to the customary law of Malabar, the right to hold possesion for twelve years is inherent in every *kanom* and it is not therefore competent to the mortgagor to redeem before the expiry of twelve years[2] ; but this right

[1] 197.

[2] *Kumini Ama* v. *Parkam Kolusheri*, I. M. H. C. R. 261; *Keshava* v. *Keshava*, 2 Mad. 45; *Shekara* v. *Raru Nayar*, 2 Mad. 193; *Ahmed Kutti* v. *Kunhamed*, 10 Mad. 192; *Achutan Nayar* v. *Keshava*, 17 Mad. 271.

to hold possession for twelve years can be excluded by express agreement between the parties [1]; and if any term is fixed in the mortgage, the period of redemption is postponed to that date [2]. The words "when the paramba is demanded, I shall restore" in a mortgage, [3] and a provision in a kanom for its surrender on demand [4] have been held to be inconsistent with its continuance for twelve years; but not the words "that the land is to be surrendered when the amount advanced is ready" [5]. In *Mahomed* v. *Ali Koya* [6], it was held that a provision in a mortgage for surrender of the property "if at any time the property should be necessary" rendered it irredeemable before the expiry of twelve years, in the absence of any special exigency; but this view was overruled by a Full Bench in *Kelu Nedungadi* v. *Krishnan Nair* [7] which held that words such as *Avasiyamayi Chodikambole, Avasiya mayi Verumbole* did not impose on the jenmi the obligation of proving some special exigency before he can redeem before the expiry of twelve years. Conversely also the *kanom* mortgagee cannot surrender his holding and demand his money before the expiry of twelve years [8].

Forfeiture of kanom.

The *kanomdar's* right to hold for twelve years is dependent on his acting conformably to usage and the interests of the *jenmi*, and is lost if he repudiates the *jenmi's* title and questions the validity of the kanom [9]; and this is so even if the hostile title is set up by the kanomdar's assignee[10]. But this does not apply where the period is fixed by contract and is not claimed under the customary law [11], and also where it is for a perpetual term [12]. A

[1] *Shekara Panikar* v. *Raru Nayar* 2 Mad. 193; *Ahmed Kutti* v. *Kunhamed*, 10 Mad. 192.

[2] Per *Innes*, J in *Keshava* v. *Keshava*, 2 Mad. 45.

[3] *Ahmed. Kutti* v. *Kunhamed*, 10 Mad. 192.

[4] *Shekora Panikar* v. *Raru Nayar*, 2 Mad 193.

[5] *Kanaka Kurup* v. *Govindan*, 5 Mad. 310.

[6] 14 Mad. 76.

[7] 26 Mad. 727.

[8] *Achutan Nayar* v. *Keshavan*, 17 Mad. 271.

[9] *Raman Nayar* v. *Kandapuni Nayar*, 1 M. H. C. R. 445; *Mayavangari Chumaran* v. *Nimini Mayuran*, 2 M. H. C. R. 109.

[10] *Raman Nayar* v. *Kandapuni Nayar*, 1 M. H. C. R. 445.

[11] *Raman Nair* v. *Vasudeva Nambudripad*, 27 Mad. 26.

[12] *Raman Nair* v. *Kunhi Kolandai Musaliar*, (1915) M. W. N. 793: 2 L. W. 941.

kanom mortgagee does not forfeit his right to hold for twelve years by allowing the *porappad* to fall into arrears [1], and a provision in a *kanom* for its surrender for default of *michavaram* is penal and ought to be relieved against [2]. Commission of wilful waste, such as cutting trees, destroying a tank essential to irrigation and failure to cultivate in a husband-like manner will work a forfeiture of the *kanom* [3].

Renewal of kanom.

Kanom mortgages are generally renewed at the end of the period fixed, and on such renewal the landlord receives a fine or premium which, according to the ancient usage ought not to exceed 20 to 25 per cent of the *kanom* or one year's rental at his option but which, at the present day is usually fixed according to the landlord's caprice; but there is no obligation on either side to renew them, unless the landlord and mortgagee are mutually desirous of doing so. When they are renewed the tenant is entitled to hold the land for another twelve years [4]. According to the customary law of Malabar renewal fees are calculated on the understanding that the tenant should be in quiet possession and enjoyment for twelve years, but if the landlord enforces the special stipulation, if any, to surrender on demand or within a shorter period, or enforces surrender in certain cases of forfeiture, the tenant is entitled to a refund of a proportion of the renewal fee [5]. A stipulation for perpetual renewal made at the time the *kanom* was entered into is invalid as being a clog on the equity of redemption [6]; but the contrary has been held in *Gopalan Nair* v. *Kunhan Menon* [7].

Anamalous Mortgages.

Kanom mortgages are anamolous mortgages within the meaning of the Transfer of Property Act and not leases [8], and no notice is required to determine them [9].

[1] *Sheikh Rantan* v. *Kadanga Shupan*, 1 M.H.C.R. 112, 113, note; *Pramathan Tupen Nambudripad* v. *Mudatil Ramen*, 1 M. H. C. R. 296.

[2] *Kottal Uppi* v. *Edavalath Thathan Nambudiri*, 6 M. H. C. R. 258.

[3] *Ramachandrier*, 28; *Moore*, 232; *Imbi Chetti* v. *Narayana Menon*, 9 M.L.J. 306 (308).

[4] *Moore*, 193.

[5] *Ibid*, 228; *Ramachandrier*, 28.

[6] *Neelakandan Nambudripad* v. *Anantha Krishna Ayyar*, 30 Mad. 61.

[7] 30 Mad. 300; *Ramanayar* v. *Kunhi Kolandai Musaliar*, (1915) M. W. N. 793 : 2 L.W. 941.

[8] *Raman Nair* v. *Vasudevan Nambudripad*, 27 Mad. 26; *Gopala Nair* v. *Kunhan Menon*, 30 Mad. 300.

[9] *Gopala Nair* v. *Kunhan Menon*, 30 Mad. 300.

Arrears of rent.

A *jenmi* who has obtained a decree for arrears of rent against the *kanomdar* can sell his interest, but the sale will not put an end to the *kanom*, but transfer the tenant's interest to the purchaser at the execution sale; and this is so even if the *jenmi* himself is such purchaser[1]. The *jenmi* is not entitled to an account of the rent payable specified in the *kanom* deed. He is at liberty to recover the amount by suit, or he may wait till the period of redemption arises and then claim to set off the arrears of rent against the *kanom* amount and the compensation payable for improvements[2].

Melkanom or Melcharth.

When the *jenmi* is desirous of raising a further sum of money on the lands outstanding on *kanom*, he may either execute a second *kanom* on the same property to a third party known as *melkanom or melcharth*, or execute to the kanomdar a document known as *kanompuram kadam*. In the former case the *melkanomdar* cannot eject the *kanomdar* or his assignee before the expiry of twelve years from the date of the *kanom*[3]. In the latter case it is really a further advance on the security of the property payable at the time of redemption. The *kanomdar* is entitled to deduct from the *porappad* reserved by the *kanom* and the stipulated interest on the *kanom puramkanom* amount[4].

Kanom puramkadam.

Kanomdar's right to trees.

The *kanomdar* during the period of his occupation is entitled to remove and appropriate to himself any trees that he has himself planted provided he leaves the property substantially in the state in which he received[5]. But he has no right of pre-emption or the right to make further advances.

Kattiadom kanom.

Kattiadom kanom is *kanom* mortgage in which the interest upon the sum advanced absorbs the whole rent paid on account of the land, and the mortgagee like the kanomdar has no right pre-emption or making further advances. It is irredeemable before twelve years[6].

[1] *Achutan Nair* v. *Keshavan*, 17 Mad. 271.

[2] *Kunju Velan* v. *Manavikrama Zamorin Rzja*, 1 M. H. C. R. 113, note.

[3] *Pro. Sud. Court; Paramatan Tupen Nambudripad* v. *Madatil Raman*, I M. H. C. R. 296.

[4] *Kunhi Amma* v. *Ahmed Haji*, 23 Mad. 105.

[5] *Vasudevan . Nambrudipad* v. *Valia Chathu Achan*, 24 Mad. 47.

[6] *Ramchendrier*, 36.

Katta Kanom.

Katta kanom is kanom mortgage redeemable at any time within twelve years [1].

Ubhaya pattom.

Ubhaya pattom is similar to *kanom* [2].

Otti.

Otti is defined as "a usufructuary mortgage the usufruct of which extinguishes the interest, leaving only a nominal rent to be paid to the mortgagor" [3]. It is called *Veppu*, *Palishamadaku* or *Nerpalisha*. *Veppu* is in use in Palghat; and *Palishamadaku* in Nedunganad and Walluvanad [4]. When an *otti* is granted, very often little or nothing is left to the *jenmi* except the right to redeem [5]. An *otti*, like a *kanom* cannot be redeemed before the expiry of twelve years[6] ,and the *ottidar* also forfeits his right to hold for twelve years by denying the *jenmi's* title [7], but does not forfeit his right by endeavouring to set up further charges which he fails to prove or by denying that an assignment of the jenm title was invalid because it was made without his consent and in defeasance of his right of redemption without any previous offer to him [8] . An *otti* differs from a *kanom* in that (1) the *ottidar* has got a right of pre-emption in case the *jenmi* wishes to sell the land, (2) the prior right which the *ottidar* has of making any further advances; and the amount secured is generally so large that the interest payable absorbs the whole rent and the *jenmi* is entitled only to pepper-corn rent. The reason for the *otti* carrying with it the right of pre-emption and the right to make further advances is apparent. As the *ottidar* advances almost the full value of the property and is in a position little short that of a vendee, it is quite intelligible that persons so situated should secure their holdings from future disturbances by an agreement entered into at the time of the contract that they should have the option of making further advances and that

[1] *Kanaka Kurup* v. *Govindan*, 5 Mad. 310.
[2] *Neelakantan Nambudripad* v. *Anantakrishna Ayyar*, 30 Mad. 61.
[3] *Moore*, 250.
[4] *Proc. Sud. Court.*
[5] *Edathil Itty* v. *Kapeshon Nayar*, 1 M. H. C. R. 122.
[6] *Edathil Itty* v. *Kapashon Nair*, 1 M.H.C.R. 122; *Kunini Amma* v. *Parkam Kolushari*, 1 M. H. C. R. 261.
[7] *Proc. Sud. Court*; *Kellu Eradi* v. *Pudupalli*, 2 M. H. C. R. 161.
[8] *Kunhali* v. *Kenathe*, 3 Mad. 74.

the customary rule should ultimately take the place of such an understanding so generally entered into [1].

Enforcement of the right of pre-emption.

How is this right of pre-emption to be enforced? The decisions are not uniform on this matter. In some cases [2] it was held that a *jenm panayam* deed executed by the *jenmi* without giving notice or the option of making further advances to the *ottidar* was invalid against him, and consequently he could successively resist a suit for redemption brought against him; while in other cases [3], the view taken was that the *ottidar* had no such right but could only ask the purchaser to convey the property to him on payment of the purchase money in a suit for redemption brought against him. All the cases on the point were reviewed by *Sir Arnold White, C.J.* and *Miller, J.* in *Sankaran Mussad* v. *Mokkath Ussain Haji* [4] in which they held that the *ottidar's* right of pre-emption by custom under the Malabar law was only a right to elect whether he would purchase or not, and not a right to veto a transfer by the *jenmi* without his knowledge, that such a right could not be pleaded as a bar to a transferee's right to redeem, without an offer to purchase that right, and that such an offer by him could not be entertained as a counter claim in a suit by the transferee for redemption, but must be enforced by a separate suit.

Right of pre-emption.

But the *ottidar* may lose his right by failure to exercise it in proper time. An *ottidar* having a right of pre-emption was given notice by the decree holder of the *jenmi* of the date of sale, calling upon him to exercise his right if so minded and the *ottidar* was present at the sale but would not bid for fear that by doing so he might involve himself in litigation. It was held that he could not afterwards exercise his right of pre-emption [5]; but mere public notice of, and the option of bidding at, a court sale of the *jenmi* right does not

[1] *Ramachendrier*, 34.
[2] *Cheria Krishnan Nambudri* v. *Vishnu Nambudri*, 5 Mad. 198; *Ambu* v. *Raman*, 9 Mad. 371; *Kantiarankutti* v. *Uthotti*, 13 Mad. 490.
[3] *Vasudevan* v. *Kesavan*, 7 Mad. 309; *Ukker* v. *Kutti*, 15 Mad. 401; *Krishnan Menon* v. *Kesavan*, 20 Mad. 305.
[4] 30 Mad. 388.
[5] *Ammotti Hagi* v. *Kunhayen kutti*, 15 Mad. 480.

constitute a valid offer of pre-emption, so as to deprive the *ottidar* of his right of pre-emption [1]. He must, pay whatever sum is *bona fide* offered to the *jenmi* for the purchase. If the offer is made to him by the *jenmi* who rightly informs him of the circumstances in reference to the offer and if he does not pay such sum, his right of pre-emption is extinguished and the jenmi can sell the land to another [2].

Ottikumpuram.

If the *jenmi* wants more money and takes a further loan from the *ottidar*, he executes an *ottikumpuram* deed. The jenmi is bound to pay this amount at the same time he pays the *otti* amount [3]. It has the same relation to *otti* as *puramkadam* has to *kanom*. The *jenmi* still retains domination over the property and can apply for more money to the *ottidar*, and if he refuses, can apply to a third party and pay him off. The *jenmi* may however be desirous of borrowing still further on the property after executing an *ottikumpuram*. He is then bound to apply to the *ottidar* and if he consents to make the required advance, the former executes a *Nirmudal* deed, by which he makes over all interest in the land to the mortgagee, except the right of water. Such further advance is recoverable with the amount of the original mortgage, the *ottidar* being to fact the owner [4]. A still further sum on the mortgage of the property is obtained by the execution of *janmam panayam*, the last recourse short of selling the land altogether. In executing this deed, the landlord relinquishes the power to redeem his land, and has nothing left in him but the nominal right of proprietorship. By going through the form of casting a few drops of water from his hand, he yields up all right of further interference with the land. He cannot sell his proprietary title to any one except the mortgagee, as he has already made over to him all the rights and privileges possessed by a proprietor [5]. Last of all he raises money by executing *Attiper*, *Atti petola*, or *Jenmadaron* [6] which is the last

Nirmudal.

Janmam panayam.

Attiper.

[1] *Cheria Krishnan Nambudri* v. *Vishnu Nambudri*, 5 Mad. 198.
[2] *Ibid.*
[3] *Proce. Sud. Court.*
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

karanam or deed executed on this occasion and without it no sale of property can be valid. The *jenmi* reserves no *porappad* or any thing to himself. He cannot, after the execution of this deed, redeem the mortgage and the relinquishment of proprietary right is complete under it. This deed generally mentions that the full value of the property disposed of has been received and states its boundaries, but does not specify the amount received. In former days the various transactions from *Otti* onwards had to be gone through; otherwise no sale was complete. But now the *jenmi* can sell his property at once without creating an *otti* at all.

Peruartham.

Peruartham approximates closely to *otti*, the mortgagee being in possession and enjoying the whole produce. "The peculiarity of this tenure is that the sum advanced, which is always the marketable value of the land for the time being, is not mentioned in the deed, and the landlord in redeeming his prior property, does not repay the amount originally advanced, but the actual value of it in the market at the time of the redemption [1]".

Kividuka otti.

Kividuka otti or Keivida otti is a mortgage by which "the landlord relinquishes the power of transferring the property to a third party, and binds himself to borrow any further sum he may require only from the mortgagee. Should the latter decline to advance the amount, the landlord may pay off the mortgage and assign the property to another [2]". It is redeemable [3].

---

[1] *Proc. Sud. Court; Shekari Varma Valia Raja* v. *Mangalam Amugar*, 1 Mad. 57.

[2] *Proc. Sud. Court.*

[3] *Kundu* v. *Impichi*, 7 Mad. 442.

CHAPTER XIV.

RECOVERY AND MODE OF REALISING ARREARS.

"Land-holder" and "Public Revenue."

(a) Arrears of revenue.

Arrears of revenue due to Government are recovered under the provisions of the Revenue Recovery Act. For the purposes of the Act a land-holder is defined to comprise all persons holding under *sanad-i-milkiyat-i-istimrar*, all other zemindars, srotriyamdars jagirdars, inamdars and all persons farming the land revenue under Government, and all holders of land under ryotwari settlements, or in any way subject to the payment of revenue direct to Government; and public revenue is defined to include cesses or other dues payable to Government on account of water supplied for irrigation [1]. An arrear of revenue accrues when the whole or any portion of the revenue is not paid on the date it falls due according to the kistbundi or other engagement, and when no particular day is fixed, according to the time when the payment fall due according to local usage [2] and bears an interest at six per cent per annum [3].

Who is a defaulter.

As soon as arrears are due, the Collector can proceed to distrain and sell the moveable property of the defaulter, or attach and sell his immoveable property, or proceed against his person. There was a difference of opinion [4] in the Madras High Court as to who was a "defaulter", and the matter is now settled by the decision of a Full Bench in *Subramania*

[1] *Section* 1.
[2] *Sections* 3. 4.
[3] *Section* 7.
[4] *Zamorin of Calicut* v *Sitarama*, 7 Mad. 405 *Seshagiri* v. *Pitchu*, 11 Mad. 452; *Srinivasa Tatha Chariar*, v. *Rama Ayyar*, 17 Mad. 247; *Munro, J.* in *Subramania Chetty* v. *Mahalingaswami Sivan*, 19 M. L. J. 275; the contrary was held in *Boja Sellappa Chetty* v. *Vriddachala Chetty*, 30 Mad. 35; *Pinhey J* in *Subramania Chetty* v. *Mahalingaswami Sivan*, 19 M. L. J. 275.

Chetty v. *Mahalingaswami Sivan* [1] which held that the registered pattadar was the defaulter within the meaning of the Revenue Recovery Act, and that therefore the real owner whose name was not registered in the Collector's books was not entitled to recover contribution from the registered owner for the amount paid by him for revenue. Where the Government levies water cess from the zemindar by reason of increase in the water supplied in consequence of improvements made by it, the zemindar is the person primarily liable to pay it [2]. A person who becomes the registered proprietor of land on a certain day becomes liable to pay the arrears of revenue due on it on that day and becomes a defaulter if he fails to pay it [3].

Default by holder of permanently sttled estates.

In the case of default by the holder of a permanently settled estate in the payment of peishcush, Section 7 of Regulation XXV of 1802 provides that his personal property is to be first proceeded against and then his lands. Section 3 of the Revenue Recovery Act gives power to the Board of Revenue to alter and fix from time to time the amount of the several kists or instalments and the dates on which they shall respectively become payable and Section 6 of the Act provides that in the case of a person holding under a *sanad-i-milkiyat-i-istimrar* or other instrument, the arrears due from him are to be recovered in terms of the sanad. The *onus* is on the holder to show what the terms of the sanad are, and in absence of any such evidence, he can be dealt with in the ordinary way [4], and even if the sanad shows that the personal property is to be proceeded against, the lands can be proceeded against, if the land-holders agree to the adoption of such a course [5]. When any portion of a permanently settled estate is sold for arrears of revenue, the assessment on that part is to be apportioned by the Collector before sale [6].

[1] 33 *Mad.* 41; *Kota Subbayya Gupta* v. *The Secretary of State*, 21 M. L. J. 656; *Kothilinga Suthuroyar* v. *Sahasranama Iyer*, 21 M. L. J. 662.

[2] *Kothlinga Sethuroyar* v. *Sahsaraname Iyer*, 21 M. L. J. 662. A contrary view was taken in *Nynappa Servai* v. *The Secretary of State*, (1910) M. W. N. 322 and *Benson, J* who was a party to both decisions doubted the correctness of the latter.

[3] *Kota Subbaroya Gupta* v. *The Secretary of State*, 21 M. L. J. 656.

[4] *Venkenna Iyyar* v. *The Secretary of State*, (1913) M. W. N. 494.

[5] *Mekaperuma* v. *The Collector of Salem*, 12 Mad. 445.

[6] *Section* 45.

In the case of others.

In the case of other defaulters, the Collecter or other officer empowered by him in that behalf, may at his discretion, proceed to realise the arrear by sale of either the moveable or immoveable property of the defaulter or of both [1].

Distraint and sale of moveable property.

The first mode of recovery of arrears is by distraint and sale of the moveable property of the defaulter which are dealt with in Sections 8 to 24 of the Act. Distraint proceedings are commenced by giving a demand in writing by the Collector or other officer empowered by him in that behalf to the person employed to distrain who is authorised to distrain the moveable property of the defaulter, if he, on being shown the demand, does not immediately pay the arrears. As soon as he makes the distraint, he is to deliver a copy of the demand and a list or inventory of the articles distrained to the defaulter with an intimation in writing that they will be immediately brought to sale, if the arrears are not previously discharged [2]. When the defaulter is absent, a copy of the writing with the endorsement is to be fixed or left at his usual place of residence or the premises where the property may have been distrained before the expiration of the third day of distress. The Act, however, does not contain any provision requiring this demand to be delivered to the defaulter in person before distress when he is absent on the day of distress; and the authority for the distraining officer to make the distress being the written demand signed by a duly empowered Revenue officer, any distress made by him is legal and the person resisting it is guilty of an offence [3]. Where such written demand was served on the defaulter *i. e.* on the registered pattadar and another person is in actual possession, he is guilty of an offence, if he is aware of the distraint and removes the crops with such knowledge [4]. If the arrears are not paid, the distraining officer is to send an inventory of the articles distrained to the public

[1] *Section* 6.

[2] *Section* 8.

[3] *Queen Empress* v. *Ramasami*, 16 Mad. 364.

[4] *In re Markkar*, 29 M. L. J. 90.

officer authorised to sell under Act VII of 1839 [1], and if the defaulter pays after distraint and before the date fixed for sale the arrears together with the incidental charges, the property distrained is to be released [2].

Distraint of crops and cattle.

If crops or ungathered produce are attached, the distrainer may either sell them when they are fit for reaping or gathering, or cause them to be reaped or gathered in due season and stored in proper places; and the cost of reaping and gathering and storing is to be defrayed by the owner on his redeeming the property or from the proceeds of the sale. If crops belonging to a tenant are attached, he can get them released on paying the arrears and the amount paid by him can be deducted from the rent payable by him; and when they have been sold, he can deduct their value from the rent payable by him [3]. The Government can attach gathered crops belonging to a tenant if they are the product of the land for which the arrears of revenue have accrued [4]. The distrainer is not to work the cattle or bullocks or use the goods or effects distrained and is to feed the cattle or livestock; and the cost of such feeding is to be paid by the owner on his redeeming the property or from the proceeds of the sale [5].

Loss of distrained property.

If the property distrained is stolen, lost or damaged by reason of want of precaution on the part of the distrainer, the Collector may recover its value by summary process from the distrainer and pay it to the person damnified [6].

How distraint to be effected.

The distress is not to be excessive [7], and must be made after sunrise and before sunset [8]. For the purpose of making the distraint, the distrainer may force open any stable, granary, godown, outhouse, or other building, and enter any dwelling-house, the outer door of which is open and break open the door of any room in such dwelling house [9]; but when the outer door of any house is shut or any room therein is appropriated by women which by the usage of the

[1] *Section* 9.
[2] *Section* 10.
[3] *Section* 11.
[4] *Krishna Chadaga* v. *Govinda Adiga*, 17 Mad. 404.
[5] *Section* 12.
[6] *Section* 13.
[7] *Section* 14.
[8] *Section* 15.
[9] *Section* 19.

country is considered private, the distrainer is to seek the assistance of a Police Officer and is, in his presence, to break open the door in the former case, and enter the room in the latter case after giving an opportunity to the women to remove themselves to another place [1]. Any person forcing open the door of a dwelling house or entering the apartments used by women in any other manner is liable to conviction before a Magistrate [2]. When the defaulter has made a fraudulent disposition of the property to prevent the distress for arrears [3], or when any property distrained has been forcibly taken from the distrainer [4], a Civil Court can order it to be restored to the distrainer.

Fraudulent dispositon by defaulter.

Sale when property is claimed by another.

When any person not being a defaulter or responsible for a defaulter claims a right to the property distrained and it is sold notwithstanding his claim, he can sue the distrainer for its price before a Civil Court [5].

Sale of distrained articles.

The sale officer is to affix a notice containing a list of the property distrained together with the day and hour of the sale on the door of the defaulter's house or the premises where the property may have been distrained and is to proclaim the sale by beat of tomtom in the village in which the lands in which arrears have accrued are and also in such place or places as the Collector or other officer empowered by him may consider it necessary to give due publicity to the sale [6]. Fifteen days after the service of the notice, the sale officer is to sell the property in one or more lots as he may consider it advisable and any surplus remaining after the payment of the arrears and incidental charges is to be paid to the defaulter [7]. The property sold is to be paid for in ready money and the purchaser is not to be allowed to remove any portion of it until the whole price is paid [8].

Attachment and sale of of immoveable property.

The second mode of recovery of arrears is by attachment and sale of the immoveable property of the defaulter and is

[1] *Section* 20.
[2] *Section* 21.
[3] *Section* 16.
[4] *Section* 18.
[5] *Section* 17.
[6] *Section* 22.
[7] *Section* 23.
[8] *Section* 24.

dealt with in Sections 25 to 47. Each and every field included in a ryotwari patta is liable for the whole assessment due under it, though for convenience sake separate amounts are entered as the revenue demand due upon separate numbers held under a single patta [1]. Therefore the purchaser of a single field in a patta cannot ask for raising the attachment on payment of the proportionate assessment on that field [2]. In *Narayana Raja* v. *Ramachandra* [3], the first defendant had two pattas for lands in two different villages A and S, and in execution of a decree against him, lands in A were sold in court-auction to the plaintiff but the patta stood in the name of the former. Subsequently arrears of revenue having accrued on the lands in S, the lands in A of which the patta stood in his name were sold for the arrears and purchased by the second defendant, and the plaintiff brought the suit for a declaration that the lands in A which he had purchased in court-auction were not liable to be sold for the arrears due on the lands in S. *Moore J*, held that as the lands in A ceased to be the property of the defaulter by virtue of court-sale, the purchaser at the revenue sale got nothing; and *Davies, J* while agreeing with *Moore, J*, held that lands under a separate patta in a different village formed another estate, and as no revenue was due on that estate, the sale thereof was invalid. But the view of *Davies, J*, was not accepted in *The Secretary of State* v. *Pisipati Sankarayya* [4] by *Miller and Munro, JJ.* who held that lands under one patta in one village could be proceeded against for default in the payment of revenue due under another patta for lands in a different village in the same district.

Attachment.

Proceedings are begun by issuing a written demand to the defaulter with the details mentioned in Section 25 calling upon him to pay the arrears within a certain time therein mentioned, and serving a copy of it on

[1] *The Secretary of State* v. *Narayanan*, 8 Mad. 130; *The Secretary of State* v. *Pisipathi Sankarayya*, 34 Mad. 493; *Gunnam Dorayya* v. *Vadapalli Ayyanna Charyulu*, 27 M. L. J. 295.

[2] *The Secretary of State* v. *Narayanan*, 8 Mad. 130.

[3] 26 Mad. 521.

[4] 34 Mad. 493.

the defaulter, or some adult male member of his family at his usual place of abode, or his authorised agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached [1]. The mode of service specified above is alternative and the adoption of any mode of service indicated therein is valid [2]. If the defaulter is a minor, the demand must be served upon his properly appointed guardian, and in the absence of such service, a sale held in pursuance thereof is invalid [3]. If the arrears are not paid in pursuance of the demand, they can be realised by attachment and sale of the defaulter's land [4]. Attachment is effected by affixing a notice thereof to some conspicuous part of the land, and it is to state that, unless the arrears and incidental charges are paid within a date therein mentioned, the land will be brought to sale. The attachment is to be notified by public proclamation on the land and by publication of a notice in the District Gazette [5].

Management of property.

The Collector may, at the time of attaching the property of a defaulter or at any time during such attachment, assume the management of the property attached, and for this purpose appoint an agent with an establishment of officers to manage the property. When the property is too inconsiderable, it is to be committed to the charge of such revenue officer as the Collector may think fit [6]. Notice of such assumption is to be given to the defaulter and published in the District Gazette [7]. The agent so appointed is to collect the rents and profits accruing due upon the estate according to the engagements subsisting between the defaulter and those holding under him, and to maintain an account of all receipts and disbursements. His accounts are to be submitted to the Collector at such periods as may be prescribed by him, and can be inspected by the defaulter at any time and a copy thereof taken by him at his own

[1] *Section* 25.

[2] *Venkanna Iyer* v. *The Secretary of State*, (1913) M. W.N. 494.

[3] *Mekaperuma* v. *The Collector of Salem*, 12 Mad. 445.

[4] *Section* 26.

[5] *Section* 27.

[6] *Section* 28.

[7] *Section* 29.

expense without fee [1]. He can proceed against the agent either civilly or criminally for any criminal or illegal act done by him causing injury to him or his estate, and the tenants also have the same remedies against him as against the defaulter[2]. All engagements entered into between the defaulter and his tenants *bona fide* without any intention of defeating and delaying the attachment, all leases which are not made at a lower rate than the usual rates of assessment, and all leases which are *bona fide* for the purpose of erecting factories or of bringing waste lands into cultivation and executed before attachment, are binding upon the Collector [3]; so also are payments made on account of rents and profits actually due before the assumption of management, but not those made after that date, or made before they were actually due [4]. All sums received from the property attached after paying the expenses of attachment and management are to be carried in liquidation of the arrears and interest, and when they are discharged in full, attachment is to be raised and the property handed over to the defaulter with a full account of all receipts and disbursements during its continuance [5].

Payment by others.

Any person claiming an interest in the land which has been or is about to be attached can obtain its release by paying the arrears, interest and costs. Such amount, if paid by the tenant can be deducted from the rent payable by him, and if paid by a mortgagee or other encumbrancer on the estate, or any person not being in possession of it but claiming an interest therein adverse to the defaulter, constitutes a charge on the land and takes priority according to the date at which the payment is made [6].

Sale of immoveable property.

Without assuming possession, the Collector may proceed to sell the lands of the defaulter. Previous to the sale, the Collector or other officer empowered by him in that behalf is to issue a notice containing the particulars given in Section 36 (2) which is to be affixed at least one month before the date of sale in the Collector's office,

[1] *Section* 30.
[2] *Section* 31.
[3] *Section* 32.
[4] *Section* 33.
[5] *Section* 34.
[6] *Section* 35.

in the Taluq kacheri, in the nearest police station-house and some conspicuous part of the land. It is to be held by public auction at such time and place as may be fixed by the Collector or other officer empowered by him in that behalf and the time may be either prior to or subsequent to the expiration of the *fasli* year. At the time of the purchase the purchaser must deposit fifteen per cent. of the purchase money with the Collector or other person empowered by him in that behalf, and pay the balance within thirty days and if he fails to do so, the lands are again to be put up for sale, and any loss resulting from the second sale and all the expenses incurred in connection therewith are to be recovered from the first purchaser in the same away as arrears of land revenue, and any profit derived from the second sale is to go to him on whose account the first sale was made [1]. If the purchaser does not pay the balance of the purchase money within thirty days of the sale, the Collector is not bound to forfeit the deposit. When lands were sold by the Revenue authorities in 1876, but the purchaser did not deposit the balance of the purchase money till 1879, and a sale certificate was issued to him in 1880, such a sale is not invalid [2].

Stay and setting aside of sale.

The sale is to be stayed if, at any time previous to the sunset of the day prior to that fixed for sale, any person claiming an interest in the land tenders the arrears, interest, and the incidental charges incurred in attachment or management of the land [3]. He is not, however, bound to deposit the arrears that had accrued due between the dates of attachment and sale, and a sale held for non-tender of this amount also when there has been a tender for the amount due before those dates is invalid [4]. At any time within thirty days from the date of sale, any person claiming an interest in the property sold can apply to set it aside on depositing in the treasury of the taluq in which the immoveable property is situated, (*a*) a sum equal to five per centum of the purchase money, and (b) a sum equal to the amount of

[1] *Section* 36.

[2] *Sonaya Pillai* v. *Kalemegham*, 5 Mad. 130.

[3] *Section* 37.

[4] *Secretary of State* v. *Rajah Goundar*, 22 Mad. 5.

arrears, interest, and incidental charges; and on such deposit and application the Collector is bound to set aside the sale and pay the five per centum deposited to the purchaser [1]. Any amount paid under Sections 37 and 37A by any tenant, *bona fide* mortgagee or other incumbrancer, or any person *bona fide* claiming any interest in the estate adverse to the defaulter may be recovered in the manner provided in Section 35 [2]. An application can also be made within thirty days from the date of sale to set it aside on the ground of some irregularity, mistake or fraud in publishing and conducting it; but no sale is to be set aside on the ground of such irregularity or mistake, unless substantial injury is proved; and if any person puts in an application under Section 38, he cannot present one under Section 37, unless the former is withdrawn.

Confirmation of sale.

When no application is made under Section 37 A or one is made under Section 38 and rejected, the Collector is to confirm the sale, though he can for other reasons recorded in writing set it aside. After the sale is confirmed, the Collector is to give a certificate of sale to the purchaser [3]. The sale is to be proclaimed in the village in which the lands are situated [4] and the purchaser can on application to a Civil Court and on production of the certificate of sale issued by the Collector recover the land purchased by him in the same manner as if it had been decreed to him by that Court [5]. Where the sale is not confirmed, or is set aside by the Collector, the purchaser is entitled to a refund of the amount deposited by him. The non-compliance of Sections 38 and 39 does not affect the validity of the sale, as there is no provision in the Act that in the event of these sections not being complied with, it is void [6], and the mere omission to display the notice of sale in the Collector's office is not sufficient to set aside the sale [7]. There was a difference of opinion in the Madras High Court whether

[1] *Section* 37 A.
[2] *Section* 37.
[3] *Section* 38.
[4] *Section* 39.
[5] *Section* 40.
[6] *Karuppa Thevan* v. *Vasudeva Sastri*, 6 Mad. 148.
[7] *Bommayya Naidu* v. *Chidambaram Chettiar*, 22 Mad. 140.

the real owner can show that the certified purchaser at a revenue sale was only a benamidar for him [1] and a Full Bench has now held that he can [2]. The object of Section 38 is only to prevent any plea being raised that the defaulter's interest did not pass by the sale [3].

Collector's power of review.

When the Collector has passed an order under Section 38 setting aside a sale he cannot subsequently confirm it [4]; nor has he got power to review his own order refusing to interfere with an order passed by his subordinate confirming a sale for arrears of land revenue [5].

Validity of a contract entered into by defaulter before sale

All contracts entered into by the defaulter with his tenants and all payments made by them to him are binding upon the purchaser to the same extent and under the same circumstances as laid down in Sections 32 and 33 [6]. They are only such as do not create a charge on the proprietary right in the land or an under-tenure and thereby impair its value [7]. Where a *kanom* was granted reserving a rent of Rs. 5 and it was not alleged or shown that it was lower than the usual rent for such land, and the object of the lease was essentially to bring waste land into cultivation and the *jenmi* agreed to pay the value of improvements to the tenant, it was held that the agreement to pay compensation for improvements was binding upon the purchaser in revenue sale [8]. In this case the kanom was treated as a lease and the kanomdar did not claim to hold possession for twelve years. The defaulter can after the date of sale recover the arrears of rent due before that date by means of all processes except distraint [9].

Effect of revenue sale.

Every sale held for arrears of revenue conveys to the purchaser the land free of all encumbrances[10], and there-

[1] *Tirumalayappa Pillai* v. *Swami Naicker*, 18 Mad. 469; *Subbarayar* v. *Asirvatha Upadesayyar*, 20 Mad. 494; *Muthunayan* v. *Sinna Samavaiyan*, 28 Mad. 526; Contra, *Narayana Chettiar* v. *Chokkappa Mudaliar*, 26 Mad. 655.

[2] *Narayanasami Padayachi* v. *Govindasami Padayachi*, 29 Mad. 473; *Rami Reddi* v. *Venkatesan*, (1914) M. W. N. 916.

[3] *Subbarayar* v. *Asirvatha Upadesayyar*, 20 Mad. 494.

[4] *Kaliappa Gounden* v. *Venkatachella Thevan*, 20 Mad. 253.

[5] *David Nadar* v. *Manikka Vachaka Desika Gnana Sambanda Pandara Sannadi*. 33 Mad. 65.

[6] *Section* 41.

[7] *Kelan* v. *Manikam*, 11 Mad. 330.

[8] *Meppatt Kunhamad* v. *Chathu Nair*, 27 Mad. 373.

[9] *Section* 43.

[10] *Section* 42.

fore of a mortgage [1], and a kanom [2] created on it. As cesses payable to Government on account of water supplied for irrigation are included in the definition of public revenue, a sale of land for arrears of water cess conveys the land to the purchaser free of encumbrances [3]. But a sale for arrears under the Abkari Act [4], or under the Land Improvements Act, [5] or under the Local Boards Act, [6] does not convey the land free of encumbrances.

Arrest of defaulter.

The third mode of realising arrears of revenue is by arrest of the defaulter. It can be resorted to only when the arrears of revenue cannot otherwise be realised, and the Collector has reason to believe that the defaulter is wilfully withholding payment of the arrears, or has been guilty of fraudulent conduct in order to evade payment. The period of imprisonment is not to exceed two years in any event, six months if the arrears do not exceed five hundred rupees, or three months if they do not exceed fifty rupees, but the imprisonment does not extinguish the debt due to Government [7].

Remedies against sureties.

All the remedies prescribed in the Act are available also against sureties [8]. Unless otherwise specially provided for, all arrears of revenue other than land revenue due to Government, all advances made by Government for cultivation or other purposes connected with the revenue and all fees or other dues payable by any person to or on behalf of the village servants employed in police or revenue duties and all cess lawfully imposed on the land may be recovered as arrears of land revenue [9]. A karnam in a permanently estate is a village servant within the meaning of section 52 [10].

Suit for proceedings taken under the Act.

Any person deeming himself aggrieved by any proceedings under the Act may institute a suit for redress before a Civil Court, provided it is brought within six months from the

[1] *The Secretary of State* v. *Pisipatis Sankarayya*, 34 Mad. 493.

[2] *Kelan* v. *Manikam*, 11 Mad. 330.

[3] *Veeranan* v. *Karupayya Pillai*, 37 Mad. 49; *Gunnam Dorayya* v. *Vadapalli Ayyanna Charyulu*, 27 M. L. J. 295.

[4] *Ramachandra* v. *Pitchaikanni*, 7 Mad. 434; *Cf. Raman* v. *Chandan*, 15 Mad. 219.

[5] *Chinnasami Mudali* v. *Tirumalai Pillai*, 25 Mad. 572.

[6] *Mathuswamier* v. *Sri Srimethanithi Swamiyar*, 38 Mad. 356.

[7] *Section* 48.

[8] *Section* 50.

[9] *Section* 52.

[10] *Collector of North Arcot* v. *Nagi Reddi*, 15 Mad. 35.

date on which the cause of action arose [1]. This special period of limitation applies to sales which are illegal by reason of contravening some express law as well as to sales which are irregular [2]. Therefore a suit for a declaration that a sale of a larger interest than was liable to be sold is illegal [3]; a suit to set aside a sale on the ground of collusion between the purchaser and village officers [4]; and a suit for a declaration and injunction as regards an order for removal of certain steps and for refund of penal assessment levied by Government [5] are governed by the special period of limitation prescribed by the Act. But it does not apply where no arrears at all are due from the land-holder and a sale is held for alleged arrears [6].

Cause of action for suit.

The cause of action arises on the date when the sale is confirmed by the Collector and not from the date of sale[7]. Where a Head Assistant Collector by virtue of the powers conferred on him by Regulation VII of 1828 made an order of confirmation, limitation begins to run from the date of such confirmation, although it is liable to revision by the Collector under the Regulation [8]. Where the sale is sought to be set aside on the ground of fraud, the period of limitation is that provided by the Revenue Recovery Act, *viz.*, six months, but the cause of action arises from the date of the discovery of the fraud [9]. These rulings were passed when the Limitation Act of 1877 was in force and it has been held that they apply under the Limitation Act of 1908 also[10]. Where the Government assigned the land revenue on certain lands to a temple, but continued to issue patta for the land, the temple can proceed against the land and bring it to sale in liquidation of the arrears due to it [11].

[1] *Section* 59.

[2] *Raja Goundan* v. *Raja Goundan*, 17 Mad. 134.

[3] *Sellaya* v. *Viraya*, 10 Mad. 62.

[4] *Venkata* v. *Chengadu*, 12 Mad. 168 (F.B.); *Iswara Patter* v. *Karuppan*, 3 M. L. J. 255; *Raman Naidu* v. *Bhasuari Sanyasi*, 26 Mad. 638.

[5] *Sankarappa Naiken* v. *The Secretary of State*; 20 M. L. J. 977.

[6] *Venkatapathi* v. *Subramanya*, 9 Mad. 457; *Venkata* v. *Chengadu*, 12 Mad. 168 (178); *Iswara Pattar* v. *Karuppan*, 3 M. L. J. 255.

[7] *Sabathy Chetty* v. *Rengappa Naiken*, 26 Mad. 495; *Chinnammal Achi* v. *Saminatha Malavaroyan*, 30 Mad. 367.

[8] *Chinnammal Achi* v. *Saminatha Malavaroyan*, 30 Mad. 367.

[9] *Venkata* v. *Chengadu*, 12 Mad. 168; *Iswara Patter* v. *Karuppan*, 3 M. L. J. 255.

[10] *Srinivasa Iyengar* v. *The Secretary of State*, 38 Mad. 92.

[11] *Kristnasami* v. *Venkatrama*, 13 Mad. 319; *Kasturi Gopala Ayyangar* v. *Anantaram Thivari*, 26 Mad. 730.

(*b*) *Arrears of rent under the Estates Land Act.*

At any time after rent has become due, the land-holder may either sue for it before the Collector, or proceed to recover the arrears by distraint on his own responsibility and sale of the moveable property of the defaulter, the growing crops, or the produce of the land or trees in the defaulter's holding, or by sale of the holding itself [1]. Modes of recovery.

Distraint can be availed of only in respect of arrears accruing due within the next preceding twelve months [2]. The following articles are exempted from distraint: (*a*) the necessary wearing apparel, cooking vessels, beds and bedding of the defaulter, his wife and children, and such personal ornaments as in accordance with religious usage cannot be parted with by a woman and (2) his ploughs and implements of husbandry, ploughing cattle and manure stocked by the ryot or cultivator and such seed grain as may be necessary for the due cultivation of the holding in the ensuing year [3]. There are two stages in distraint proceedings. In the first stage (Sections 78 to 91) the distraint is effected by the land-holder or his agent on his own responsibility without recourse to Court; and in the second stage (Sections 92 to 110) the distrainer has recourse to Courts for the purpose of recovering the rent due from the defaulting ryot by sale of the distrained property. The first stage begins by serving on the defaulter a written demand specifying the amount of arrears and an account exhibiting the grounds on which the demand is made [4], and the contents of the demand and its mode of service on the defaulter are indicated in Section 78 (2). If the demand is not immediately satisfied the distrainer can proceed to distrain [5]. Immediately after distraining, the distrainer must prepare a list or description of the property distrained and serve a copy of it on the defaulter in the manner indicated in Section 78 (2) and send a copy of the list or description together with a copy of the written demand and account within ten days of the service of demand on the defaulter to the Sale Officer Distraint.

[1] *Section* 77.
[2] *Ibid.*
[3] *Ibid.*
[4] *Section* 78 (1).
[5] *Section* 79.

empowered under Act VII of 1839 to sell property distrained for arrears of rent; and in case the distrainer has notice that the cultivator is some person other than the defaulter, a copy of the demand and of the list or description must be served on him also [1]. The property distrained must be as nearly as possible, equal to the amount of arrears due and costs of distress [2] and it must be made after sunrise and before sunset [3] and for the purpose of making the distraint the distrainer may force open any stable, granary, godown, outhouse or other building and enter any dwelling house the outer door of which is open and break open the door of any apartment in such dwelling house belonging to the defaulter [4]. In cases where the outer door of the dwelling is shut, or where the apartments are appropriated as zenana or residence for women, he can break it open in the presence of a police officer in the former case, and enter the apartment in his presence in the latter case after giving due notice for the removal of the woman [5]. In case the distrainer apprehends a breach of the peace while making the distraint, he can get the assistance of the police [6]. Standing crops and other ungathered produce may, notwithstanding the distraint be tendered and reaped by the owner after due notice to the distrainer, and if the former neglects, the latter can do so at the expense of the former [7]. The distrained property must be placed in charge of some one appointed by the distrainer for this purpose, who must store the grain in some convenient place in the neighbourhood [8], but the distrainer must not work the cattle or bullocks nor make use of the property distrained but must provide food for cattle and other live-stock [9]. Where by reason of the distrainer not taking proper care of the property distrained, it is lost, damaged, or destroyed while in his keeping, he may be sued for damages before the Collector by the owner [10].

1 *Section* 79.
2 *Section* 81.
3 *Section* 82.
4 *Section* 84.
5 *Section* 85.
6 *Section* 80.
7 *Section* 83 (1) and (2).
8 *Section* 83 (3).
9 *Section* 86.
10 *Section* 88.

Withdrawal of distraint.

Distress may be withdrawn (1) by tender or payment of, or security for, the amount of demand together with subsequent interest and cost of distress to the distrainer at any time before the date fixed for the sale [1]; (2) by payment of such amount to the Sale Officer at any time before the sale [2]; (3) by the allowance of the claim to the property preferred by a third person [3]; and (4) by the failure of the distrainer to apply for sale under Section 92.

Fraudulent conveyance by distrainer.

When the defaulter has made a fraudulent conveyance of his moveable property to avoid distress or any person has forcibly or clandestinely taken away property once distrained [4], it or its value may be ordered by the Collector to be paid to the distrainer.

Sale of distrained property.

The second stage in distraint proceedings begins with an application for sale of the property distrained to the Sale Officer within 15 days of the distraint [5]. On its receipt the Sale Officer must send a copy of the application, and a copy of the list or description to the Collector, and issue a notice to the defaulter and cultivator, if there is one, requiring them to pay the amount demanded, or to institute a suit contesting the distraint within 15 days of the date of service of notice [6]. The officer must also fix a date of sale, not less than 15 days from the date of service of notice on the defaulter, and cause it to be proclaimed in the village in which the property distrained is, the date fixed for sale not being less than 7 days from the date of the proclamation [7]. If the defaulter or cultivator does not pay the amount or file a suit within 15 days from the date of service contesting the right of distraint, or if such a suit is filed and is decided against the defaulter, the Sale Officer is to proceed to sell the property distrained [8]. The sale is ordinarily to be held in the village where the property distrained is kept or at the nearest place of public resort, if the Sale Officer thinks that it is likely to sell to better advantage there [9]. The distrainer must produce the

[1] *Section* 87 (1).
[2] *Section* 87 (2).
[3] *Section* 89.
[4] *Section* 90.
[5] *Section* 92.
[6] *Section* 95.
[7] *Ibid.*
[8] *Section* 96.
[9] *Section* 97.

property at the time and place of sale [1]. Provision is made for the manner of sale [2], postponement of sale [3], and for re-sale, when the purchaser makes default in making payment for his purchase [4]. The purchaser is to be given a certificate [5] and the Sale Officer or any Officer subordinate to him is prohibited from bidding and purchasing at such sale [6]. Sections 98 and 99 provide for sale of special articles, such as perishables, crops or products which, from their nature, do not admit of being stored. Protection against irregularity in distraint is provided for by Sections 103 and 104. Section 106 deals with the disposal of the proceeds of the sale, and Section 109 provides for cases of conflict between distraint by land-holder and attachment by a Civil Court. Section 108 saves the person from whom arrears have been realised without any default on his part by authorising him to deduct the amount realised from him from the rent payable by him to his immediate landlord and so on until the true defaulter is reached.

Sale of ryot's holding.

The third remedy open to the land-holder for realising arrears of rent is by sale of the ryot's holding and is dealt with in Sections 111 to 131. The first step to be taken by the land-holder is to send within the revenue year in which the arrears became due, [7] a written notice to the Collector to be served through him on the defaulter requiring him to pay the arrears, or to institute a suit before the Collector contesting his right of sale within 30 days of the service of notice on him [8]. The procedure to be adopted in such cases is laid down in Section 112 and provision is made in Section 113 for intimating the service of notice on the defaulter to the land-holder. If the arrears are not paid, or no suit is instituted contesting the right of sale, or if such a suit has been filed and decided against the defaulter, or is withdrawn [9], the land-holder is to apply to the Collector for sale of the holding within forty five days from the date of the intimation of service in the first two cases, and

1 *Section* 97.
2 *Section* 100.
3 *Section* 101.
4 *Section* 102.
5 *Section* 105.
6 *Section* 107.
7 *Section* 111.
8 *Section* 112.
9 *Section* 114.

thirty days from the date of such decision or withdrawal in the third case [1]. On receipt of such application the Collector is to appoint a Selling Officer [2]. He is to fix a date of sale and proclaim it to the village in which the property is situated, the date of sale not being less than thirty days from the date of the proclamation [3]. The contents of the proclamation are given in Section 117 (2). The sale is to be held in the village in which the property is situated or at the nearest place of public resort, if the selling officer thinks that it is likely to sell to better advantage there [4]. A lessee from a land-holder whose term has expired has no right to proceed against the holding of the tenant, even though the arrears accrued due during the currency of the ease [5]. The Collector is given power to give time not exceeding two months, unless the Local Government has by a general or special order allows a longer period to the defaulter to pay the amount due, if he makes an application within thirty days from the date of the proclamation of sale and gives security for the amount due [6]. Provision is made for the manner of sale [7], as also for the postponement of sale [8].

Stoppage of sale.

A sale may be stopped (1) if the land-holder withdraws his application or, (2) if the amount due and costs are paid before the property is knocked down, either to the Selling Officer or the Collector [9]. In case any person having an interest in the property pays the amount in order to avoid the sale, he is given a special charge on the holding which will take priority over every other charge except any similar charge and the charge for arrears of rent[10], and if he is a tenant or sub-tenant of the holding, he is entitled to deduct the whole or any portion of the amount paid from any rent payable by him to his immediate landlord; and that landlord may deduct in like manner until the defaulting ryot is reached[11]. Only such portion of the holding as is necessary for the realization of the arrear is to be brought to sale[12]. The

[1] *Section* 115.
[2] *Section* 116.
[3] *Section* 117.
[4] *Section* 119.
[5] *Sundaram Iyer* v. *Kulathu Iyer*, 29 M.L.J. 505.
[6] *Section* 133.
[7] *Section* 120.
[8] *Section* 121.
[9] *Section* 122.
[10] *Section* 128.
[11] *Section* 129.
[12] *Section* 126.

purchaser is to be given a certificate and takes the property subject to any right or interest which the ryot has created therein with the land-holder's permission in writing registered and subject to any encumbrance created before the passing of the Act [1].

Setting aside of sale.

A sale of property is to be set aside on payment of the amount by the defaulter or any person having a right or interest in the holding affected by the sale, if any application is made within thirty days from the date of sale.

One co-sharer can maintain a suit for ejectment for his share, if the other co-sharers are made defendants [2], and where one of two joint land-holders possessed the kudiwaram interest of the ryot, a suit by the other land-holder to eject the ryot is unsustainable, as his remedy is to sue either for joint possession or for partition, neither of which can be granted by the Revenue Court [2]. A party refusing to join as plaintiff may be joined as defendant [3].

Application of act to other tenants.

Section 134 of the Estates Land Act provides that the summary remedies provided for the collection of arrears may be availed of by (1) a land-holder against a tenant of private land in the estate when pattas and muchalikas have been exchanged between them, and (2) a ryotwari land-holder or other registered holder of land in proprietary estates against his tenant from whom he has taken a written agreement specifying the rent to be paid. A suit by a tenant of a ryotwari land-holder for damages for illegal distraint of moveable property is solely cognizable by the revenue court [4].

---

[1] *Section* 124.

[2] *Subramania Chettiar* v. *Peria Sami Thevar*, 26 M. L. J. 435.

[3] *Mangalasami Thevar* v. *Satiayappa Pavandan*, (1913) M. W. N. 696.

[4] *Narayanasamy Iyer* v. *Venkatarama Iyer*, 29 M.L.J. 607.

APPENDIX.

THE CROWN GRANTS ACT.

ACT XV OF 1895.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

An Act to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown, and to remove certain doubts as to the powers of the Crown in relation to such grants.

WHEREAS doubts have arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, and it is expedient to remove such doubts; it is hereby enacted as follows:—

1. (1) This Act may be called the Crown Grants Act, 1895.

(2) It extends to the whole of British India;

(3) *Repealed by Act X of 1914.*

2. Nothing in the Transfer of Property Act, 1882, contained shall apply, or be deemed ever to have applied, to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of Her Majesty the Queen-Empress, her heirs or successors, or by or on behalf of the Secretary of State for India in Council to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed [1].

3. All provisions, restrictions, conditions, and limitations ever contained in any such grant or transfer as aforesaid shall be valid, and take effect according to their tenor, any rule of law, statute, or enactment of the Legislature to the contrary notwithstanding [2].

---

[1] For the object and intention of the Act, see *Dost Muhammad Khan* v. *The Bank of Upper Burma*, 3 A.L.J. 129; 628; *The Secretary of State* v. *Kasturi Reddi*, 26 Mad. 268.

An absolute grant by Government does not restrict the power of the grantee to sell or mortgage the property, *Dost Muhammad Khan* v. *The Bank of Upper Burma*, 3 A. L. J. 129; 628.

Leases by or on behalf of Government are not exempted from registration by virtue of the Act, *Munshi Lal* v. *The Notified Area of Barant*, 36 All. 176.

[2] Power of Government to create a line of succession different from the ordinary law, *Sheo Singh* v. *Raghuban Kunwar*, 27 All. 634 : 32 I.A. 203; *Haji Mahamad Nasurudin Khan* v. *Eagambara Mudaly*, 2 M. L. T. 55.

PERMANENT SETTLEMENT REGULATION.

REGULATION XXV OF 1802.

PASSED ON THF 13TH JULY 1802.

A Regulation for declaring the proprietary right of lands to be vested in individual persons, and for defining the rights of such persons, under a permanent Assessment of the Land-revenue in the British territories subject to the Presidency of Fort St. George.

WHEREAS it is known to the zemindars, mirasidars, ryots, and cultivators of land in the territories subject to the Government of Fort St. George, that from the earliest, until the present period of time, the public assessment of the land-revenue has never been fixed; but that, according to the practice of Asiatic Governments, the assessment of the land-revenue has fluctuated without any fixed principles for the determination of the amount, and without any security to the zemindars or other persons for the continuance of a moderate land-tax; that, on the contrary, frequent inquiries have been instituted by the Ruling Power, whether Hindoo or Mahomedan for the purpose of augmenting the assessment of the land-revenue; that it has been customary to regulate such augmentations by the inquiries and opinions of the local officers appointed by the ruling Power for the time being; and that in the attainment of an increased revenue on such foundations, it has been usual for the Government to deprive the zemindars, and to appoint persons on its own behalf to the management of the zemindaries, thereby reserving to the ruling Power the implied right, and the actual exercise of the proprietary possession of all lands whatever; and whereas it is obvious to the said zemindars, mirasidars, ryots, and cultivators of land that such a mode of administration must be injurious to the permanent prosperity of the country by obstructing the progress of agriculture, population and wealth, and destructive of the comfort of individual persons by diminishing the security of personal freedom and of private property; wherefore, the British Government, impressed with a deep sense of the injuries arising to the State and to its subjects from the operation of such principles, has resolved to remove from its administration so fruitful a source of uncertainty and disquietude, to grant to zemindars and other land-holders, their heirs and successors a permanent property in their land in all time to come, and to fix for ever a moderate assessment of public revenue on such lands, the amount of which shall never be liable to be increased under any circumstances.

2. In conformity to these principles, an assessment shall be fixed on all lands liable tc pay revenue to the Government; and in consequence of such assessment, the proprietary right of the soil shall become vested in the zemindars or other proprietors of land, and in their heirs and lawful successors for ever.[1]

[1] See pp. 17, 76; zemindar's right to minerals, pp. 84, 85; liability to maintain tanks, 85; to water-cess pp. 86-91.

3. Where the conditions of the permanent assessment of the revenue may have been adjusted, a *sanad-i-milkiyat-i-istimrar*, or deed of permanent property, shall be granted on the part of the British Government to all persons being, or constituted to be, zemindars or proprietors of land; and each zemindar or proprietor of land shall execute and deliver to the Collector of the district a corresponding kabuliyat.

The said sanads and kabuliyats shall contain the conditions and articles of tenure by which the lands shall be held.

In all cases of disputed assessment, reference shall be had to the sanads and kabuliyats, and judgment shall be given by the Courts of Judicature in conformity to the conditions under which the agreement may have been formed in each particular case.

4. The Government having reserved to itself the entire exercise of its discretion in continuing or abolishing, temporarily or permanently, the articles of revenue included, according to the custom and practice of the country, under the several heads of salt and saltpetre—of the sayar, or duties by sea or land—of the abkari, or tax on the sale of spirituous liquors and intoxicating drugs—of the excise on articles of consumption—of all taxes, personal and professional, as well as those derived from markets, fairs or bazaars [1], of lakhiraj lands (or lands exempt from the payment of public revenue), and of all other lands paying only favourable quit-rents—the permanent assessment of the land-tax shall be made exclusively of the said articles now recited [2].

5. The Government having charged itself generally with the maintenance and support of such establishments as may be requisite in the several provinces, cities, and towns, for the better keeping of the police, no lands shall be considered, as heretofore, to be holden on the condition of performing police duties, unless the same shall be specially provided for in the sanad-i-milkiyat-i-istimrar; and all lands or russooms heretofore appointed to the support of the police éstablishments shall be disposed of in such manner as the Government may think fit.

6. The land-holders shall regularly pay in all seasons, in the current coin of their respective provinces the amount of the permanent assessment fixed on their lands; the remission of revenue which has occasionally been granted according to the custom of the country on account of drought, inundation, or other calamity of the season, shall cease and never be revived: and where land-holders may fail to discharge their pecuniary engagements, their property shall be answerable for the consequence of such failure.

7. Where such failure may occur, the personal property of land-holders shall, in the first instance, be attached, and ultimately their lands shall be liable to be sold and transferred from them for ever, if necessary, for the payment of the public revenue [3].

8. Proprietors of land shall be at free liberty to transfer without the previous consent of the Government, or of any other authority to whomever they may think proper, by sale, gift or otherwise their proprietary right in the whole, or in any part of their zemindaries; such transfers of land shall be valid, and shall be respected by Courts of Judicature and by the officers of Government; provided they shall not be repugnant to the Mahomedan or to the Hindoo laws, or to the regulations of the British Government.

[1] See pp. 78,79. [2] See p. 161. [3] See p. 261.

But unless such sale, gift or transfer shall have been regularly registered at the office of the Collector, and unless the public assessment shall have been previously determined and fixed on such separated portions of land by the Collector, such sale, gift, or transfer shall be of no legal force or effect, nor shall such transaction exempt a zemindar from the payment of any part of the public land-tax assessed on the entire zemindary previously to such transfer, but the whole zemindary shall continue to be answerable for the total land-tax, in the same manner as if no such transaction had occurred [1].

9. Where a part of a zemindary may be sold for the liquidation of arrear of the public assessment, or for the satisfaction of a decree of a Court of Judicature, or where part of a zemindary may be transferred by sale, gift, or otherwise, the zemindar or land-holder shall furnish to the Collector true and correct accounts of the entire zemindary, and of the portions of the zemindary about to be separated for a period of time not less than the three years preceding such sale or transfer, in order that the due proportion of the public revenue may be fixed thereon.

The assessment to be fixed in this case on the separated lands shall always bear the same proportion to the actual value of the separated portion as the total permanent jama on the zemindary bears to the actual value of the whole zemindary [2].

10. [*Repealed by Madras Act II of 1869*].

11. The zemindars or land-holders shall support the regular and established number of karnams in the several villages of their respective zemindaries [3].

The karnams shall be appointed from time to time by the zemindars, and shall obey all legal orders issued by them: but the karnams shall not be liable to be removed from their offices, except by the sentence of a Court of Judicature.

Where a zemindar, or his under-farmers, tenants, or ryots, may have cause of complaint against a karnam for breach of his duty, such zemindar shall be free to institute a suit in the Adalut of the *zillah* for the purpose of bringing such karnam to trial and punishment; but where a zemindar may deprive a karnam of his office without such previous regular process, the zemindar shall be liable to make such satisfaction for the injury as the Adalut of the zillah may decree.

Where a karnam may be dismissed from his office by the sentence of a Court of Judicature, the zemindar shall in the first instance select a successor from the family of the last incumbent, provided any member of that family be found capable of performing the duty of karnam; but where no member of the family may be capable of discharging the duty of karnam, in that case the zemindar shall exercise his discretion in the appointment of a proper person [3]. The name of the person appointed to succeed to the office of karnam shall be reported to the Collector of the zillah by the zemindar [4].

12. It shall not be competent to proprietors of land to appropriate any part of a landed estate permanently assessed to religious or charitable, or to any other purposes by which it may be intended to exempt such lands from bearing their

[1] See p. 79.
[2] See p. 80.
[3] See p. 141.
[4] This section ceases to be in force upon the extension of Madras Act II of 1894, or any portion thereof to any estate.

portion of the public tax; nor shall it be competent to a proprietor of land to resume lands, or to fix a new assessment on lands which may be allotted (at the time when such proprietor may become possessed of the estate in which lands are situated) to religious or to charitable purposes under the denominations of Devasthan or Devadayam, of Brahmadayam or Agraharam, of Yaumia Jeevadan or Madad Ma'ash, or Piran, Fakiran, or any other description of exempted lands described under the general term of lakhiraj, unless the consent of the Government shall have been previously obtained for that purpose [1].

13. Where the consent of the Government may have been obtained to a particular appropriation of the lands above described, the proprietor of the estate in which such lands are situated shall pay such assessment of revenue as may be fixed on the said lands by the Collector of the zillah.

14. Zemindars or land-holders shall enter into engagements with their ryots for a rent, either in money or in kind, and shall within a reasonable period of time grant to each ryot a patta or cowle, defining the amount to be paid by him, and explaining every condition of the engagement. And the said zemindars or land-holders shall grant regular receipts to the ryots for discharges in money or in kind made by the ryots on account of the zemindars. Where a zemindar after the expiration of a reasonable period of time from the execution of his kabuliyat may neglect or refuse to comply with the demand of his under-farmers or ryots for the pattas or receipts above mentioned, such zamindar shall be liable to be sued in the Adalut of the zillah, and shall pay such damages as may be decreed by the Adalut to the complainant.

15. Zemindars shall aid and assist the officers of Government in apprehending and securing offenders of all descriptions, and they shall inquire and give notice to the Magistrates of robbers or other disturbers of the public peace who may be found, or who may seek refuge in their zemindaries.

---

[1] See pp. 99-100.

PERMANENT SETTLEMENT INTERPRETATION.

REGULATION IV OF 1822.

PASSED ON THE 12TH JULY 1822.

A Regulation declaring the true intent and meaning of Regulation XXV of 1802, so far as it relates to the rights of the actual cutivators of the soil.

DOUBTS having occurred regarding the meaning and construction of the Regulations enacted for insuring the prompt realization of the rents due and payable by the actual cultivators of the soil, either to the officers of Government on the public account, or to zemindars or others entitled to receive the same by inheritance or purchase, or in virtue of special grants issued by the ruling authority on terms of a permanent or temporary settlement of the land revenue; it has become necessary for Government to declare, that in passing those Regulations it had no intention of authorizing any infringement or limitation of any established rights of any class of its subjects whatsoever, such rights being properly determinable by judicial investigation only. The Honourable the Governor-in-Council has therefore been pleased to pass the following Regulation [1].

2. It is hereby declared that the provisions of Regulation XXV of 1802 were not meant to define, limit, infringe or destroy, the actual rights of any description of land-holders or tenants; but merely to point out in what manner tenants might be proceeded against, in the event of their not paying the rents justly due from them, leaving them to recover their rights, if infringed, with full costs and damages, in the established Courts of Justice.

---

[1] See pp. 17, 77.

LAND REGISTRATION.

REGULATION XXVI OF 1802.

PASSED ON THE 13th JULY 1802.

A Regulation for governing the registration of landed estates paying revenue to the Government in the British Territories subject to the Presidency of Fort St. George.

WHEREAS it is expedient that public means should be established for the purpose of ascertaining the public revenue on landed estates paying revenue to the Government, as well as for prescribing rules for the transfer of all lands; wherefore the following rules have been passed for that purpose :—

2. The Collectors of zillahs shall keep public registers, according to the forms prescribed by the Board of Revenue, for the purpose of registering the landed property paying revenue to Government within their respective zillahs, and shall enter all transfers of land from one proprietor to another, which said registers shall be open at all times to the inspection of persons concerned in seeing them[1].

3. Transfers of land made by individual persons, without being so registered in the registers of the Collectors, shall not be valid in the Court of Adalut ; and such transfers of land being unregistered, shall not exempt the persons in whose names the entire estates are registered from paying the revenue due to Government from such lands[2].

See pp. 80, 81.

[2] See p. 60.

MALABAR LAND REGISTRATION.

ACT III OF 1896.

An Act to make better provision for the registration of proprietors of estates subject to the payment of revenue direct to Government in Malabar and the Wynaad.

WHEREAS Regulation XXVI of 1802 provides that landed property paying revenue to Government shall be registered by the Collector, and whereas such landed property in Malabar and the Wynaad has in many cases not been registered in the names of the proprietors thereof; and whereas it is desirable for the security of the public revenue to provide a summary means whereby the Collector may ascertain such proprietors. It is hereby enacted as follows:—

1. (1) This Act may be called the Malabar Land Registration Act, 1895.

(2) It extends to the whole of the Malabar district and to that portion of the Nilgiri district which is known as South-East Wynaad.

2. In this Act, unless there is something repugnant in the subject or context,—

"Estate" means any land which is subject either now or prospectively to separate assessment to land revenue payable direct to Government.

"Registered" means registered in the public registers maintained by the Collector in accordance with the provisions of Regulation XXVI of 1802.

3. Within such time as the District Collector may fix as hereinafter provided, any person who is or claims to be the proprietor or joint proprietor of an estate, and whose name is not already registered, or any other person having authority to act on his behalf, may make application to the District Collector or to an officer empowered by him to receive such application for registration as proprietor or joint proprietor of the estate.

4. The District Collector shall fix for each taluk or such other local area as he may deem fit the date before which the proprietors of the estates situated therein may, under the last preceding section, apply to have their names registered, and may at any time alter any date so fixed:

Provided that such date or altered date shall not be less than two months or more than four months from the date of the publication of the same in the District Gazette.

5. Every date fixed as provided in the last preceding section shall be notified in the Fort St. George and District Gazettes, and by notices to be posted up at the office of the District Collector, at the offices of the Revenue Divisional Officer, District Munsif, Tahsildar, Deputy Tahsildar and Sub-Registrar of Assurances

within whose local jurisdiction the local area to which the date applies is situated, and at all police stations and amshom cutcherries within such local area ; and shall also be proclaimed by beat of drum within the local area to which the date applies.

Provided that no irregularity or omission in the publication of the notices or in the proclamations referred to in this section shall affect the validity of any proceedings under this Act.

6. As soon as conveniently may be after the date so fixed, the Collector shall, on a day and at a place to be previously notified in the District Gazette, whether or not an application for registration under the preceding sections has been made and whether or not there is any dispute as to the entry to be made in the register, ascertain and determine by such summary inquiry as he thinks fit, in respect of every estate to which the date applies, the person who, in his opinion is entitled to be registered as proprietor thereof, and shall register him accordingly ; and, if any such estate shall not previously have been separately surveyed or demarcated, may cause it to be so surveyed or demarcated, or both.

7. In the case of an estate belonging to joint proprietors who are members of a joint family, or to a religious or charitable foundation, the estate shall be registered in the name of the managing member, for the time being of such family, or of the trustee, manager or superintendent for the time being of such foundation, as the case may be, who shall be described in the register as such managing member, trustee, manager or superintendent; and such registration shall be as effectual and valid as if made in the names of all the joint proprietors or of all the persons interested in such foundation.

8. In any inquiry under Section 6 the Collector shall hear any party to a dispute who attends on the day notified or on the day to which the inquiry may be adjourned, and shall receive such evidence as he may see fit ; and in the case of a dispute, he shall record the nature of the dispute, his decision thereon, the grounds of the decision and such other particulars as he thinks fit.

9. (1) If the person registered under Section 6 or Section 7 has not made an application under Section 3, the Collector shall give him notice of the registration by the publication of the fact in the District Gazette, and also, if his address is known, by letter sent by post registered.

(2) If any person to whom notice has been given under this section objects to such registration, he may apply to the Collector within two months of the date of the publication of such notice in the District Gazette or within one month of the receipt of the registered letter containing such notice, whichever is later, to have his name removed from the register ; and the Collector shall thereupon consider his objections, and shall either remove his name from the register, or direct its retention therein as he may see fit ; in the former case the Collector shall proceed under section 6 as if no such registration had been made.

10. Every registration purporting to be made in accordance with the procedure prescribed by this Act—

i may be revised by the Collector on application made within three months, and

ii shall be subject to any decree or order which may be passed by any Civil Court of competent jurisdiction: Provided that in any suit to set aside or modify such registration, or in any appeal in such suit, in which suit or appeal an order or decree is passed *ex parte* against the Secretary of State for India in Council or against the Collector, neither the said Secretary of State in Council nor the Collector shall be made liable in costs.

11. On payment of the prescribed fees the Collector shall furnish to any person who may apply for the same copies of the record of every inquiry held under this Act and of every order and entry made thereunder or under Regulation XXVI of 1802.

12. Nothing in this Act shall be deemed to affect the provisions of Regulation XXVI of 1802 in respect of the mutation in the register kept by the Collector under that Regulation of the name of the proprietor registered in accordance with the provisions of this Act when a transfer of the proprietary interest in any estate takes place, whether by purchase, inheritance, gift, or otherwise.

13. Every person registered as proprietor of an estate shall be deemed to be the land-holder in respect of such estate within the meaning and for the purpose of the Madras Revenue Recovery Act II of 1864, and no proceedings taken under the said Act against such person or against any land registered in his name shall be deemed invalid or ineffectual by reason of any error in such registration or on the ground that such person was not the real or sole proprietor.

14. Notwithstanding anything contained in this Act or in Regulation XXVI of 1802, the Collector shall, on the application of the registered proprietor of an estate, register as occupant jointly with such proprietor any person entitled to occupy such estate under an agreement in writing for a period of not less than five years:

Provided that no such registration shall take place unless such person signifies his consent in writing to such registration, or a Civil Court of competent jurisdiction passes a decree, which it is hereby empowered to do, directing such registration in pursuance of a contract entered into between the proprietor and such person whereby the latter has undertaken to pay direct to Government the amount of land revenue assessed on such estate:

Provided further that such registration shall have effect for the period of such agreement only.

15. In every case in which an occupant of an estate has been registered under the last preceding section, and an arrear of revenue has accrued due in respect of such estate subsequent to such registration, the Collector may take proceedings in the first instance against such occupant under the provisions of the Madras Revenue Recovery Act II of 1864, in so far as they relate to the seizure, attachment and sale of moveable property or of the crops or ungathered products of land on which an arrear is due:

Provided that nothing herein contained shall debar the proprietor from recovering by suit from such occupant the arrear of revenue or portion thereof which, owing to the default of such occupant, has been paid by, or recovered from him ;

Provided further that nothing contained in this section shall be deemed to affect the power of the Collector to recover from the registered proprietor of such estate under any or all of the provisions of the said Act any arrear of revenue which may be due on such estate or on any other estate registered in the name of such proprietor.

16. Except as otherwise provided by this Act, no Civil Court shall have jurisdiction in any matter which the Collector is empowered by or under this Act to dispose of, or shall take cognizance of the manner in which the Collector exercises any powers vested in him by or under this Act.

17. All costs of any inquiry or proceedings held before, or of any survey or demarcation directed by, the Collector under this Act shall be payable by the parties concerned, and the Collector may pass such orders as he shall think fit in respect of the payment of such costs; and in the event of such costs not being paid on demand may recover the amount thereof in the same manner as if it were an arrear of land revenue, and pay the sum so recovered to the person entitled to receive it.

18. Notwithstanding anything contained in Regulations I and II of 1803 of the Madras Code, no appeal shall lie to the Board of Revenue from any order made by the District Collector under this Act.

19. Subject to the provisions of Section 13, nothing contained in this Act and nothing done in accordance with this Act shall be deemed to—

(*a*) preclude the Government or any person from bringing a regular suit for possession of or for a declaration of right to any immoveable property to which the Government or such person may deem itself or himself entitled; or

(*b*) render a registration under this Act an admission on the part of the Government of the right of the person in whose name such estate may be registered or an admission of the validity of the title under which the estate is held; or

(*c*) affect the rights of the Government or of any person in respect of any estate or of any interest therein.

20. The Board of Revenue may, after previous publication, make subsidiary rules for the carrying out of the purposes of this Act, and may prescribe the fees, if any, to be paid for the service of summons issued under Madras Act III of 1869 in connection with inquiries and proceedings under this Act.

21. The Local Government may, by notification, suspend the operation of this Act in any specified portion of the districts to which it applies, and may by subsequent notification, bring it again into operation.

LAND REVENUE ASSESSMENT.

ACT I OF 1876.

An Act to make better provision for the separate assessment of alienated portions of permanently settled estates.

Whereas it is desirable to make better provision for the separate assessment to land-revenue of portions of permanently settled estates alienated by sale or otherwise ; It is hereby enacted as follows:—

1. The alienor or alienee of any portion of a permanently settled estate, or the representative of any such alienor or alienee, may apply to the Collector of the district in which such portion is situate for its registration in the name of the alienee and for its separate assessment in respect of land-revenue[1].

2. The Collector shall thereupon hold an inquiry as to who is the present owner of the property in respect of which the application is made.

For the purposes of such inquiry the Collector shall publish a notice in the local Gazette, in three successive issues that the application has been made, and that unless cause is shown to the contrary within sixty days from the date of notice, such separate assessment will be made. He shall also cause notice of the inquiry to be given to any alienor or alienee who has not joined in the application.

If on such inquiry it appears that the alienation has taken place and that all the parties to such alienation concur in applying for the separate assessment of the portion alienated, and if objection is not taken by any person interested in the estate, or being taken is disallowed by the Collector, the Collector shall proceed to register the alienated portion in the name of the alienee and to apportion the assessment on such alienated portion in the manner provided in section 45 of Madras Act II of 1864.

3. Upon such assessment being declared, there shall be deducted from the land-revenue payable in respect of such estate an amount equal to the sum assessed on the portion so separately assessed.

4. Upon such assessment being made, the portion so assessed shall no longer be liable in respect of arrears of revenue due by the estate of which it formed a part ; nor shall such estate be liable in respect of the portion so assessed.

5. Any person aggrieved by the fact of the separate registration of such portion may sue in a Civil Court for a decree declaring that such separate registration ought not to be made.

6. Any person aggrieved by the Collector's refusal to register may sue in a Civil Court for a decree declaring that such separate registration ought to be made.

[1] See pp. 80-82.

7. Any person aggrieved by the apportionment of the assessment under section 2 of this Act may appeal to the Board of Revenue within ninety days from the date of the declaration of such assessment; and the order of the Board of Revenue shall be final[1].

8. The Governor in Council may at any time, if it appears that there has been fraud or material error in the apportionment of such separate assessment, cause the same to be re-adjusted.

9. [*Repealed by Act XI of 1901.*]

---

1 See. p. 82.

LAND REVENUE ASSESSMENT AMENDMENT.

ACT II OF 1914.

An Act to amend the Madras Land Revenue Assessment Act, 1876.

WHEREAS it is expedient that persons other than District Collectors should be authorized to exercise the powers and perform the duties referred to in the Madras Land Revenue Assessment Act, 1876; It is hereby enacted as follows :—

1. This Act may be called "The Madras Land Revenue Assessment (Amendment) Act, 1914."

2. The words "Collector of the district" and "Collector" in the Madras Land Revenue Assessment Act, 1876, shall include any officer who may hereafter be empowered by the Governor in Council to exercise the functions of a District Collector in respect of alienated portions of any permanently settled estate and shall be deemed to have always included any officer who has heretofore exercised such functions.

3. Notwithstanding anything in the Indian Limitation Act, 1908, any person aggrieved

(*a*) by the fact of the separate registration between the first day of January 1912 and the commencement of this Act by an officer other than the Collector of the district of any portion of a permanently settled estate, or

(*b*) by the refusal between the said dates by such officer to register any portion of a permanently-settled estate.

may within twelve months after the commencement of this Act sue in a civil court for a decree that such registration ought not to be made, or ought to be made, as the case may be,

---

THE MADRAS IMPARTIBLE ESTATES ACT.

ACT II OF 1904.

An Act to declare that certain estates are impartible and that the proprietors of such estates cannot exercise unrestricted powers of alienation in respect thereof.

WHEREAS it is expedient to amend the law in regard to the impartibility and inalienability of certain estates ; It hereby enacts as follows :—

1. (1) This Act may be called "the Madras Impartible Estates Act, 1904."

(2) It extends to the whole of the Presidency of Madras except the districts of Malabar and South Canara.

(3) On this Act coming into force, the Madras Impartible Estates Act, 1902, and the Madras Impartible Estates Continuance Act, 1903, shall be repealed.

2. In this Act unless there is something repugnant in the subject or context:

(1) "Alienation" includes a temporary transfer, such as a mortgage or a lease.

(2) "Impartible estate" means an estate descendible to a single heir and subject to the other incidents of impartible estates in Southern India.

(3) "Proprietor of an impartible estate" means the person entitled to possession thereof as single heir under the special custom of the family or locality in which the estate is situated or if there be no such family or local custom under the general custom regulating the succession to impartible estates in Southern India.

3. The estates included in the schedule shall be deemed to be impartible estates.

4. (1) The proprietor of an impartible estate shall be incapable of alienating or binding by his debts, such estate or any part thereof beyond his own lifetime unless the alienation shall be made, or the debt incurred, under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather of the other coparceners, to make an alienation of the joint property, or incur a debt, binding on the shares of the other coparceners independently of their consent.

(2) In particular and without prejudice to the generality of the foregoing provisions, the proprietor of an impartible estate is hereby expressly authorised.—

- (*a*) to grant sites for public charitable and public religious institutions.
- (*b*) to grant mining or quarrying leases for terms not exceeding sixty years and leases of the panrai or home farm lands for terms not exceeding fifteen years, provided that every such lease
  - i. shall be by registered deed and shall be made to take effect in possession not later than twelve months after its date ;

[1] See pp. 82-84.

ii. shall reserve the best rent that can reasonably be obtained, regard being had to any money laid out or to be laid out by the lessee for the benefit of the estate, but not to any fine or premium paid or to be paid in consideration of granting such lease ;

iii. shall contain a covenant by the lessee for payment of rent and a condition of re-entry on the rent not being paid within a time therein specified not exceeding three months ;

iv. if a mining or quarrying lease, may make the rent ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of in or from such estate, or any other land, or by or according to any facilities given in that behalf, and may reserve a fixed or minimum rent with or without power for the lessee, in case the rent according to acreage or quantity in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

(3) Nothing in this section shall be construed to restrict the power of the owner of an impartible estate to provide for the succession thereto in default of heirs.

5. When the proprietor of an impartible estate proposes to grant any such lease as specified in section 4, sub-section (2), clause (*b*), it shall be lawful for such proprietor or the intending lessee to submit a draft of the proposed lease to the Board of Revenue for approval, and the Board, if satisfied after making such enquiry and giving such notices as it thinks fit, that the terms of such draft lease are in accordance with the provisions of this Act, may approve thereof and affix its seal thereto in token of approval ; and if the proprietor shall thereafter execute the lease in the terms of the draft lease so approved and sealed, such lease shall be deemed to have been duly granted in accordance with the provisions of this Act.

6. Notwithstanding anything hereinbefore contained, the proprietor of an impartible estate shall be incapable of alienating, or binding by his debts, such estate or any part thereof beyond his own lifetime for the payment of land revenue due to Government, unless he shall have first obtained the consent in writing of the Collector of the district in which the estate is situated. Such consent shall not be refused unless in the opinion of the Collector the case is one in which the land revenue due to Government may be realized by the management of the estate under the provisions of the Madras Revenue Recovery Act, 1864.

7. This Act shall not affect alienations made or debts incurred before the coming into force of this Act and shall cease to apply to estates or parts of estates which may hereafter be lawfully alienated otherwise than by temporary transfer.

8. (1) In computing the period of limitation applicable to suits and legal proceedings other than suits stayed and to appeals barred by the Madras Impartible Estates Act, 1902, the period during which such suits, proceedings or appeals were stayed or barred by the said Act shall be excluded, and all such suits,

proceedings and appeals shall be deemed to have been actively prosecuted during such period within the meaning of section 52 of the Transfer of Property Act, 1882.

(2) If in any suit, or proceeding or appeal permitted to proceed by the Madras Impartible Estates Continuance Act, 1903, it be finally decided that any estate named in the schedule attached to this Act is partible, such estate shall be deemed not to have been mentioned in the schedule.

SCHEDULE.

North Arcot.

1. Kalahasti.
2. Karvetnagar.
3. Punganuru.
4. Kangundi.
5. Bangari Palayam.
6. Naraganti Palayam.
7. Vallivedu and Kamavaram Divisions of Pulicherla Palayam.
8. Gudipati Palayam.
9. Tumba Palayam.
10. Kalluru Palayam.

South Arcot.

1. Vettavalam.
2. Kurumba Goundan Jagir.
3. Jadaya Goundan Jagir.
4. Ariya Goundan Jagir.

Chingleput.

1. Kalahasti.

Coimbatore.

1. Uttukuli.
2. Samattur.
3. Kottampatti.
4. Poravipalayam.
5. Ramapatnam.
6. Metratti.
7. Tungavi.
8. Jottampatti.
9. Vedapatti.

Ganjam.

1. Parlakimidi.
2. Dharakota.
3. Kallikota,
4. Peddakimidi.
5. Chikati.
6. Mandasa,
7. Chinnakimidi.
8. Serugada.
9. Humma.
10. Bodogada.
11. Surangi.
12. Jarada.
13. Budarasingi.
14. Tarla.
15. Biridi.
16. Paluru.

Godavari.

1. Pithapuram.
2. Nidadavolu Baharzhalli and Ambarapeta.
3. Vegayammapeta.
4. Tangallamudi.
5. Bhadrachallam.
6. Kotipalli in the Vijianagram Zemindari.
7. Telikicherla.
8. Vilasa.
9. Janupalle.
10. Jalimudi.

Kistna.

1. Devarakota.
2. Munagula Paragana.
3. Chintalapatti Vantu.

Madura.

1. Ramnad.
2. Sivaganga.
3. Rettayambadi.
4. Peraiyur.
5. Saptur.
6. Bodinaikkanur.
7. Gandamanaickanur.
8. Ayakkudi.
9. Idayankottai.
10. Ammayanayakanur.

11. Puliyankulam.
12. Jyotilanayakkanur.
13. Uttappanayakkanur.
14. Doddappanayakkanur.
15. Nadukottai.
16. Melakottai.
17. Sandaiyur.
18. Tevaram.
19. Erasakkanayakkanur.
20. Mambarai.

Nellore.

1. Venkatagiri.
2. Chundi.
3. Mutayalapadu.
4. Kalahasti.

Salem.

1. Shulagiri Palaiyapattu.
2. Ankusagiri Palaiyapattu.
3. Peria Kalrayan Nad.
4. Chinna Kalrayan Nad.
5. Aria Gounden Jagir.

Tanjore.

1. Ghandarvakottai.
2. Kallakottai.
3. Konur.
4. Sillattur.
5. Palayavanam.
6. Pappanadu.
7. Singavanam.
8. Madukkur.
9. Neduvasal.
10. Sendangudi.
11. Attivetti.

Tinnevelly.

1. Ettiyapuram.
2. Sivagiri.
3. Settur.
4. Urkkadu.
5. Singumpatti.
6. Uttumali.
7. Maniachi.
8. Kadambur.
9. Attankarai.
10. Nadavakurichchi Minor Division.
11. Talaivankottai.
12. Alagapuri.
13. Mannarkottai.
14. Sinnalkudi and Kadambankulam.
15. Kollapatti.
16. Kollankondan.
17. Avudaiyapuram.

Trichinopoly.

1. Marungapuri.
2. Kadavur.
3. Turaiyur.
4. Udayarpalaiyam.

Vizagapatam.

1. Vizianagram.
2. Bobbili.
3. Saluru.
4. Madugula.
5. Jeypore.
6. Kurupam.
7. Sangamvalasa.
8. Kasipuram.
9. Pachipenta.
10. Andhra.
11. Saripalli Bhimavaram.

THE KARNAMS REGULATION.

REGULATION XXIX OF 1802[1].

PASSED ON THE 13th JULY 1802.

A Regulation for establishing the Office of Karnam, and defining the Duties of the said Office, in the British Territories subject to the Presidency of Fort St. George.

1. The office of karnam being still of great importance to the preservation of the rights and property of the people, it is expedient to provide for the continuance of that office on an efficient establishment, for the purpose of facilitating the decision of suits in the Courts of Judicature, of preventing the diminution of the fixed revenue of the Government, and of securing individual persons from injustice by enabling the public officers of Government and the Courts of Judicature to procure authentic information and accounts. In conformity, therefore, to the ancient usages of the country, the following rules have been enacted for the establishment of the office of kar nam :—

2. An office of record, under a karnam, shall be established in each village of a district where the land-revenue may have been permanently assessed on the lands ; provided the revenues arising from such village, inclusively of charges, may amount to the annual sum of four hundred pagodas or upwards. But in villages where the annual revenue may be less than the said sum of four hundred pagodas, it shall be competent for one karnam to superintend and discharge the duties of the karnam's office in two or more villages.

3. The nomination of persons to the office of karnam shall be in the actual proprietors of lands [2].

4. [*Repealed by Act No. XII of 1876.*]

5. Karnams shall not be dismissed from their offices except by the sentence of a Court of Judicature.

6. Where vacancies may occur in the office of karnam, either by death or dismission, the land-holder concerned shall report the event to the Collector, and shall within thirty days nominate a proper person to fill the vacancy, acquainting the Collector with the name of such person.

[1] Upon the extension of Mad. Act II of 1894 or any portion thereof to the office of Village Accountant in any estate this Regulation ceases to be in force in such estate.—Mad. Act II of 1894, S. 3.; No portion of this Regulation applies to any local area which is not a permanently settled proprietary estate,— Mad. Act III of 1895, S. 2.

[2] See p. 142.

7. In filling vacancies in the office of the karnam, the heirs of the preceding karnam shall be chosen by the land-holders concerned, except in cases of incapacity, on proof of which before the Judge of the zilla, the said land-holders shall be free to exercise their discretion in the nomination of persons to fill vacancies [1].

8. Proprietors of land shall deposit in the Adalat of the zilla, in the head kachari of the Collector, and in the principal kachari of each zamindari or estate, authentic lists containing the names of the karnams on their respective estates, and the names of the villages of which the said karnams may have been appointed to keep the accounts.

9. It shall be competent for the Board of Revenue at the Presidency to authorize, through the channel of the Collectors, the proprietors of land to reduce the number of karnams in all cases where such reductions may appear to be advisable to the said Board.

10. Proprietors of land neglecting to appoint karnams shall be liable to fine for such neglect, at the discretion of the Adalat of the zilla.

11. *First.*—Karnams duly appointed to their offices shall keep complete registers of the extent of the lands in each village, specifying the boundaries and landmarks and showing their appropriation: namely, arable, cultivated and uncultivated, pasture, occupied for houses, gardens, rivers, tanks, springs or wells, waste in hills, jungle, or rocks.

Second.—The said registers shall specify the extent and description of land in each village exempt from paying revenue to Government at the time when the permanent assessment was fixed, the purposes to which the exempted lands are appropriated, and the names of the holders of such lands.

Third.—The said registers shall specify the lands in each village exempted by grants or sanads from paying revenue to Government, the purposes for which such lands were granted, the condition of the grant, and the names of the holders.

Fourth.—Karnams shall report to the proprietors of lands the death of all incumbents on lands exempted from the payment of revenue to Government.

Fifth.—Karnams shall be present at the estimation of the crop, at the beating out, and at the measuring of the grain.

Sixth.—Karnams shall keep true accounts of the gross produce of all lands, whether paying revenue to Government or not; where the produce of such lands may be shared between the proprietors and the cultivators, karnams shall also enter in their registers the quantity of grain so divided, as well as the rates of division.

Seventh.—Karnams shall enter in their registers the rates and amount of all fees and meras appropriated to the officers and servants of the villages, specifying whether such fees or meras are payable from the gross produce of the entire lands, from the proprietor's share, or from the ryot's share.

Eighth.—Where lands may be liable to pay money-rents, karnams shall keep registers of the extent of the land cultivated, and of the rates and amount of the money-rents.

Ninth.—Karnams shall keep registers of the land cultivated in gardens, and of the rates and amount of the division of the produce of such lands, when the produce may be divided in kind.

[1] *See* pp. 143—144.

Tenth.—Karnams shall keep registers of the quit-rent and ready money payments collected in each village.

Eleventh.—Karnams shall keep monthly registers of the price of all kinds of grain.

Twelfth.—Karnams shall keep rigisters of strangers passing or repassing as reported to him by the village-watcher, and such registers shall at all times be open to the inspection of the officers of police.

Thirteenth.—Karnams shall keep the accounts which are to exhibit the actual revenue aud charges of the village, and the records of their offices entire; and shall not carry such accounts or records out of their respective villages, unless required to do so by competent authority. Karnams secreting the accounts or records of their offices, or transporting them beyond their respective villages, except by due authority, shall be liable to fine and imprisonment until the accounts and records may be produced; but proprietors or farmers of land shall at all times have free access to the accounts and records, with power to take copies of them.

12. Karnams shall produce, whenever required by the proprietor or farmer of the lands, by the Collector, or by the Adalat of the zilla, the records and accounts relating to the lands, produce, revenue, and charges of their villages respectively.

13. Collectors shall not demand from karnams their accounts or records for any other purpose than that of assessing the public revenue upon the portions of estates which it may be necessary to divide, in consequence of attachment for arrears of revenue, or in pursuance of a decree of a Court of Judicature, or for the accommodation of the joint proprietors of lands; provided that this section shall not be construed to preclude Collectors or other public officers from demanding from karnams the information required for the administration of the revenues of such lands as may escheat to Government or remain khas after attachment for arrears of revenue.

14. On complaints by proprietors of land, the Adalats of the several zillas shall have authority to make orders to prohibit the Collectors respectively from demanding the attendance of the karnams, the accounts, or information; and to levy fines from such Collectors for persisting to demand their attendance, accounts, or information, for any other purposes than those authorized by this Regulation.

15. Where Collectors or Courts of Judicature may have occasion to require the attendance of a karnam, a notice shall be delivered to the said karnam, specifying the time and place of attendance, the nature of the accounts required, and the persons before whom such accounts shall be examined.

16. Where karnams may refuse to comply, or may unreasonably delay to comply with such notice duly communicated, it shall be competent for the Adalat to punish karnams by fine or imprisonment, until the accounts or information required be produced.

17. Karnams shall be compellable to swear to the truth of such accounts or information as they may furnish before a Court of Judicature: and it shall be competent for the Court to grant a commission for the purpose of receiving the depositions of such karnams as it may be necessary to examine at a distance from the court; provided that the said commission shall contain the name of each karnam to be examined on oath.

18 Where karnams may deliver false or fabricated or mutilated accounts or information, after having been duly sworn, the Judge of the Adalat shall commit such karnams to be tried for the crime of perjury.

19. Proprietors of land or other persons associating themselves with karnams for the purpose of producing or procuring false or fabricated or mutilated accounts or information, shall also be committed by the Judge of the Adalat for trial for subordination of perjury.

HEREDITARY VILLAGE OFFICES ACT [1].

ACT III OF 1895.

An act to repeal Madras Regulation VI of 1831, and for other purposes.

WHEREAS it is expedient to provide more precisely for the succession to certain hereditary village offices in the Presidency of Madras; for the hearing and disposal of claims to such offices or the emoluments annexed thereto; for the appointment of persons to hold such offices and the control of the holders thereof and for certain other purposes: It is hereby enacted as follows:—

1. (1) This Act may be called the Madras Hereditary Village Offices Act, 1895; and it shall come into force from such date as may be notified by Government.

(2) Section 5 applies to the whole of the Presidency of Madras; the rest of the Act applies to the whole of the said Presidency except the scheduled districts as defined in the Scheduled Districts Act, 1874.

2. (1) On and after the commencement of this Act, no portion of Madras Regulation XXIX of 1802 shall continue to apply to any local area which is not a permanently-settled proprietary estate.

(2) From the preamble of Act XXIV of 1859 (An Act for the better regulation of the Police within the territories subject to the Presidency of Fort St. George), the words "and improve the condition of the village Police" shall be omitted; and, for the definition of the word "Police" in section 1 of the same Act, shall be substituted the following clause, namely:—

"The word 'Police' shall include all persons appointed under this Act."

(3) In clause (*c*) of the definition of the word "estate" in section 4 of the Madras Proprietary Estates' Village Service Act, 1894, after the word "palaiyam," shall be inserted the words "or jaghir"; and, in sub-section (1) of section 15 of the same Act, between the words "among the" and the words "holders of the offices," shall be inserted the words "families of the last."

3. This Act shall apply to the following classes of village offices, provided that emoluments have been attached thereto;

(1) hereditary village offices in local arrears to which the Madras Village Cess Act, 1893, has been, or may be, extended.

(2) hereditary village offices to which the Madras Proprietary Estates' Village Service Act, 1894, is extended;

(3) other hereditary village offices in proprietary estates except

i. the offices forming class (4) below and;

ii. in proprietary estates wherein Madras Regulation XXIX of 1802 remains in force, the office of village accountant;

[1] *See* pp. 146-150, 152-156.

(4) the hereditary offices of village artizans and village servants such as the following, namely :—

i. the village carpenter,

ii. the village blacksmith,

iii. the village barber,

iv. the village washerman,

v. the village potter,

vi. the village astrologer,

vii. the village purchit or priest.

4. In this Act, unless there is something repugnant in the subject or context,—

"Emoluments" means and includes—

i. lands ;

ii. assignments of revenue payable in respect of lands :

iii. fees in money or agricultural produce ;

iv. money-salaries and all other kinds of remuneration ;

granted or continued in respect of, or annexed to, any office by the State.

"proprietary estate" and "proprietor" mean, respectively, an estate and proprietor as defined in the Madras Proprietary Estates' Village Service Act, 1894, as amended by this Act :

"village" means any local area now recognized as a village or hereafter declared by Government to be a village.

5. The emoluments of village-offices, whether such offices be or be not hereditary, and in the scheduled districts as defined in the Scheduled Districts Act, 1874, all such emoluments and other emoluments granted or continued in remuneration for the performance of duties connected with the collection of the revenue or the maintenance of order, shall not be liable to be transferred or encumbered in any manner whatsoever, and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof.

6. (1) In any local area in which the Madras Village Cess Act, 1893, is in force the Board of Revenue may, subject to rules made in this behalf under section 20 group or amalgamate any two or more villages or portions thereof so as to form a single new village or divide any village into two or more villages and, thereupon, all hereditary village offices to which the said Act applies in the villages, portions of villages or village grouped, amalgamated or divided as aforesaid, shall cease to exist, and new offices, which shall also be hereditary, shall be created for the new village or villages. In choosing persons to fill such new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished.

(2) If two or more village offices exist in any village in which the Madras Village Cess Act, 1893, is in force, the Board of Revenue may, subject to the approval of Government, direct that the number of such village-offices shall be reduced, and thereupon, the Collector shall dispense with the services of the officers no longer required and shall retain those whom he may consider to be best qualified to discharge the duties of the remaining offices.

7. (1) The Collector may, of his own motion or on complaint and after inquiry, fine, suspend, dismiss or remove the holder of any of the offices forming class (1) in section 3, and suspend, dismiss or remove the holder of any of the offices forming class (3) in the said section, for misconduct or for neglect of duty or incapacity or for non-residence in the village or for any other sufficient cause, and shall make a record of his reasons for so doing in writing and furnish a copy of the same to the village officer concerned.

Provided that, when a village munsiff who is also the head of the village is suspended or removed under the Madras Village Courts Act, 1889, such suspension or removal shall involve his suspension or removal from the office of head of the village.

(2) A Tahsildar or Deputy Tahsildar may, of his own motion or on complaint and after enquiry, fine the holder of any of the offices forming class (1) in section 3 for any of the causes specified in sub-section (1) and in such amount as the Board of Revenue may, by general or special order, prescribe. The provisions of sub-section (1) in regard to the recording of reasons and the furnishing of copies shall apply to proceedings taken under this sub-section.

8. A proprietor may, of his own motion or on complaint and after enquiry, suspend, dismiss or remove the holder of any of the offices in his estate forming class (3) in section 3, except the village-accountant, the head of the village and the village watchman or police-officer, for misconduct or for neglect of duty or in capacity or for non-residence in the village or for any other sufficient cause and shall make a record of his reasons for so doing in writing and furnish a copy of the same to the village officer concerned.

9. The powers conferred on a Collector by sub-section (1) of section 7 over the holders of the village offices forming Class (3) in section 3, except the offices of village accountant, head of the village and village watchman or police-officer, shall not be exercised, unless, for reasons to be recorded in writing, the Collector is satisfied that the proprietor concerned has neglected to exercise in an adequate manner the powers conferred on him by section 8.

10. When a vacancy occurs in any of the village offices forming class (1) in section 3, the Collector shall fill up the vacancy in accordance with the provisions of the following sub-sections :—

(1) No person shall be eligible for appointment who—

(*a*) is not of the male sex ;

(*b*) has not attained the age of majority ;

(*c*) is not physically and mentally capable of discharging the duties of the office ;

(*d*) has not qualified according to the educational test prescribed for the office in question by the Board of Revenue by rules mader under section 20 ;

(*e*) has been convicted by Criminal Court of any offence which, in the opinion of the Collector, disqualifies him for holding the office.

(2) The succession shall devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible zamindaries in Southern India.

(3) Where the next heir is not qualified under sub-section (1), the Collector shall appoint the person next in order of succession who is so qualified, and in the absence of any such person in the line of succession, may appoint any person duly qualified under sub-section (1).

(4) Where an office has become vacant by the dismissal or suspension of the last holder, the Collector may direct that, until the death or return to duty of such last holder, the duties of the office shall be performed by some person duly qualified under sub-section (1) who is not an undivided member of the family of the dismissed or suspended officer; provided that, when the officer who has been dismissed dies, or if the officer who has been suspended dies while under suspension, the vacancy caused by such death shall be filled up in accordance with the provisions of sub-sections (2) and (3).

(5) When the person who would otherwise be entitled to succeed to an office is a minor, the Collector shall register the minor as the heir of the last holder and appoint some other person qualified under sub-section (1) to discharge the duties of the office until the person registered as heir, on attaining majority or within three years thereafter, is qualified under sub-section (1) to discharge the duties of the office himself, when he shall be appointed thereto. If the person registered as heir under this sub-section dies, or if he remains disqualified under sub-section (1) for three years after attaining majority, the Collector shall fill up the vacancy as provided in sub-sections (2) and (3).

(6) If a vacancy is caused by the resignation, dismissal, removal or suspension of the holder of an office and the Collector does not give the direction referred to in sub-section (4), he shall fill up the vacancy in accordance with the provisions of this section as if it had been caused by the death of the said holder: provided that, upon the expiry of the period of suspension of an officer who has been suspended, or if, for any reason, an officer who has been dismissed, removed or suspended, is permitted to resume the office from which he has been dismissed, removed or suspended, the person appointed to fill the vacancy caused by the said suspension, dismissal or removal shall cease to hold office.

11. When a vacancy occurs in a proprietary estate in any of the offices forming class (3) in section 3, the proprietor shall fill up the vacancy in accordance with the provisions of the following sub-sections:—

(1) No person shall be eligible for appointment who—

(*a*) is not of the male sex;

(*b*) has not attained the age of majority;

(*c*) is not physically and mentally capable of discharging the duties of the office.

(2) The succession shall devolve in accordance with the law or custom applicable to the office in question at the date on which this Act comes into force.

(3) Where the next heir is not qualified under sub-section (1), the proprietor shall appoint the person next in order of succession, who is so qualified, and, in the absence of any such person in the line of succession, may appoint any person duly qualified under sub-section (1).

(4) When the person who would otherwise be entitled to succeed to an office is a minor, the proprietor shall register the minor as the heir of the last holder and appoint some other person qualified under sub-section (1) to perform

the duties of the office until the person registered as heir is qualified under sub-section (1) to discharge the duties of the office himself, when he shall be appointed thereto. If the person registered as heir under this sub-section dies, or if, on attaining majority, he proves to be disqualified under clause (c) of sub-sections (1). the proprietor shall fill up the vacancy as provided in sub-sections (2) and (3).

12. The succession to village offices forming class (4) in section 3 shall devolve in accordance with the law or custom applicable thereto at the date on which this Act comes into force.

13. (1) Any person may sue before the Collector for any of the village offices specified in section 3 or for recovery of the emoluments of any such office, on the ground that he is entitled under sub-section (2) or (3) of section 10 of the Madras Proprietary Estates' Village Service Act 1894, or under sub-section (2) or (3) of section 10 or sub-section (2) or (3) of section 11 or section 12 of this Act, as the case may be to hold such office and enjoy such emoluments; or, being a minor, may sue before the Collector to be registered as heir of the last holder of any such office.

Provisos :—

i. no suit shall be entertained for a mere declaratory decree.

ii. when one of the facts in issue in a suit is whether the emolument of the office consist of land or of an assignment of revenue payable in respect of land, the Collector shall decide the claim on the assumption that only the said assignment constitutes the emoluments; but such decision shall not bar the right of the claimant to institute a suit in a Civil Court for recovery of the land itself.

(2) If, at any time, before the completion of the trial of a suit preferred under this section for any office or for the recovery of the emoluments of any office, it appears to the Collector that the claimant is not eligible for appointment under sub-section (1) of section 10 of the Madras Proprietary Estates' Village Service Act, 1894, or under sub-section (1) of section 10 or sub-section (1) of section 11 of this Act, as the case may be, he shall pass an order rejecting the plaint.

14. (1) No suit preferred before a Collector under the last preceding section shall be entertained which is not preferred within three years from the date of the cause of action arising, whether such date be before or after the commencement of this Act.

Provided that, in the case of a person who, by reason of minority, was disqualified for holding office, the right to sue for such office or for the recovery of the emoluments thereof shall accrue from the date of his attaining majority.

(2) No application for the execution of a decree or order passed under this Act shall be entertained, if made after the expiration of one year from the date of such decree or order.

(3) Decrees or orders passed under Madras Regulation VI of 1831 may be executed under the provisions of this Act; provided that no application for the execution of such decree or order shall be entertained, if made either after the expiration of three years from the date of such decree or order or after the expiration of one year from the commencement of this Act.

(4) In cases in which the decree or order sought to be executed was appealed against, the periods of limitation prescribed in sub-sections (2) and (3) shall commence from the termination of the appeal.

15. The District Collector may transfer to his own file any suit on the file of any Revenue officer in charge of a division of the district or from the file of one such officer to that of another or to the file of an Assistant or Deputy Collector not in charge of a division, for disposal.

16. (1) The trial of suits under this Act shall be regulated by rules made by the Board of Revenue under section 20 and by the following provisions:—

i. a date shall be fixed for the hearing of the suit and the same shall be notified to the parties who shall be entitled to be heard in person or by agent ;

ii. the parties shall be entitled to produce witnesses and to demand that any person whose evidence they require shall be summoned as a witness or that any person shall be summoned to produce a document, and the officer trying the suit shall comply with such demand unless for reasons to be recorded, he considers it unnecessary to do so :

iii. the officer trying the suit shall record, in his own hand and in English, a memorandum containing the material averments of the parties, the material portions of the evidence, his decision and the reasons therefor.

(2) Every person to whom a summons is issued under this section shall be legally bound to obey the same.

17. Decrees and orders passed in suits under this Act may provide for payment of costs according to such scale and subject to such rules as may be prescribed by the Board of Revenue under section 20 and shall be executed in accordance with rules to be made by the Board of Revenue under the said section.

18. (1) If, before or during the hearing of a suit under this Act or of an appeal against a decree or order passed in a suit under this Act, or if, in the execution of any such decree, any question of law or usage having the force of law, or of the construction of a document which construction may affect the merits, arises, and the officer trying the suit or appeal or executing the decree entertains reasonable doubt on such question, he may, either of his own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained and refer such statement for the decision of the Board of Revenue and shall stay further proceedings until the said decision is communicated to him.

(2) The Board of Revenue shall, if any of the parties so request, hear him or his agent and shall decide the point referred and transmit a copy of its judgment to the officer by whom the reference was made, and the said officer shall, on receipt thereof proceed to dispose of the case in conformity with the decision of the said Board; and the correctness of the decision of the said Board, shall not be contested in any appeal made under this Act.

19. All suits brought and appeals made under Madras Regulation VI of 1831 shall, after the commencement of this Act, be heard and disposed of as if they had been preferred under this Act.

20. The Board of Revenue may, with the approval of Government and after previous publication, make rules not inconsistent with this Act or with the Madras Proprietary Estates' Village Service Act, 1894, in regard to the following matters :—

i. the division, grouping and amalgamation of villages ;

ii. the holding of enquiries under sections 6, 7 and 8 and the hearing of appeals under section 23 ;

iii. the educational qualifications required of the holders of the village offices forming class (1) in section 3;

iv. the procedure to be followed in disposing of suits and appeals from decrees or orders passed in suits and the registers to be maintained in connection therewith ;

v. the execution of decrees and orders passed in suits and the taxation of costs ;

vi. the salaries and other allowances to be assigned to the holders of the village offices forming class (1) in section 3 and the method of their payment ;

vii. the duties of the holders of the village offices forming classes (1) and (3) in section 3, and the descriptions and forms of the accounts and registers to be kept by them ;

viii. the custody, production and transfer of the accounts and other records kept by the holders of the village offices forming classes (1) and (3) in section 3.

ix. the publication of administration reports under the Madras Village Cess Act, 1893, the Madras Proprietary Estates' Village Service Act, 1894, and this Act ;

x. any other matters calculated to enhance the efficiency of the village service.

21. No Civil Court shall have authority to take into consideration or decide any claim to succeed to any of the offices specified in section 3 or any question as to the rate or amount of the emoluments of any such office or except as provided in proviso (ii) to sub-section (1) of section 13, any claim to recover the emoluments of any such office [1].

Provided that, if, in any suit instituted under this Act, the defendant has pleaded before the Collector that a Revenue Court has no jurisdiction to entertain the suit, on the ground that no emoluments, as defined in this Act, appertain to the office in respect of which the suit is brought, and if on appeal preferred from the decree in such suit, the appellate authority has decided adversely to such plea, the defendant may, within six months from the date of the appellate decree institute a suit in a Civil Court to set aside such appellate decree on the said ground and on that ground only.

22. Nothing herein contained shall affect the provisions of section 52 of Madras Act II of 1864 or the provisions of Madras Act IV of 1866 or, except as provided in sub-section (1) of section 6 shall be deemed to create or confer an hereditary right to any village office.

[1] See pp. 155—156.

23. (1) From every order passed by a Collector under section 6 or 7, and from every decree order passed by a Collector in a suit preferred under section 13, an appeal shall lie, whithin one month, to the District Collector, or, if the said order or decree was passed by the District Collector, an appeal shall lie, within three months, to the Board of Revenue. The decision on appeal, of the District Collector or the Board of Revenue, as the case may be, shall be final.

Provided that, in respect of the offices of head of the village and village accountant, a second appeal shall lie, within three months, to the Board of Revenue against the decision on appeal of the District Collector in suits preferred under section 13 and in cases of dismissal of a village officer under section 7.

(2) From every order passed by a Tahsildar or Deputy Tahsildhar under sub-section (4) of section 7, and from every order passed by a proprietor under section 8, an appeal shall lie, within one month to the Collector whose decision shall be final.

23-A. Notwithstanding anything contained in any Regulation or Act to the contrary, no appeal shall lie after the commencement of this Act from any decree or order passed in any suit brought or appeal made under Madras Regulation VI of 1831 unless such appeal would lie under section 23 had the decree or order sought to be appealed against been passed in a suit, appeal or proceeding commenced under this Act.

24. If the offier to whom an appeal is presented under this Act in the capacity of District Collector or Collector happens to bé the officer who passed the decision which is appealed against in another capacity, he shall report the fact to the Board of Revenue or to the District Collector, as the case may be, and the appeal shall be disposed of by the said Board or District Collector and the order passed on appeal shall be final.

25. The provisions of sections 5 and 12 of the Indian Limitation Act, 1877, so far as they relate to suits, appeals and applications, shall, *mutatis mutandis*, apply to suits, appeals, or applications for the execution of decrees of orders, instituted, preferred or made under this Act.

26. The Government may declare that the powers of punishing village officer which are vested in the Collector by this Act and by the Madras Proprietary Estates' Village Service Act, 1894, shall be exercised in any specified local area by the District Superintendent or Assistant Superintendent of Police in respect of all, or any of, the village watchmen or police-officers in that local area. From every order fining, suspending, dismissing or removing a village watchman or police-officer passed by a District Superintendent or Assistant Superintendent of Police by virtue of a declaration made under this section, an appeal shall lie, within one month, to the District Magistrate, whose decision shall be final.

PROPRIETARY ESTATES' VILLAGE SERVICE.

ACT II OF 1894 [1].

An act to amend the law relating to village-officers in permanently settled and certain other Estates.

WHEREAS it is expedient to amend the law relating to village-officers in permanently-settled estates, in unsettled palaiyams, and in inam villages, and to make better provision for their appointment and remuneration, and for the prevention and summary punishment of misconduct or neglect of duty on their part, and generally, for securing their efficiency ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Madras Proprietary Estates' Village Service Act, 1894.

2. The Government may, by notification, extend this Act or any portion thereof to any estate within the Presidency of Madras, and to the office of any of the following classes of village-officers, by whatever designation such village-officer may be locally known, in such estates :—

(1) village accountants.

(2) heads of villages.

(3) village watchmen or police-officers.

and may at any time rescind, revoke, amend or vary any such notification.

In case of doubt whether a village-officer in any estate falls under any of the above classes, the Government shall have power to decide whether such village-officer comes under any of the above classes, and, if so, under which of them.

3. Upon the extension of this Act or of any portion thereof to the office of village Accountant in any estate, section 11 of Madras Regulation XXV of 1802 and Madras Regulation XXIX of 1802 (*A Regulation for establishing the office of karnam, and defining duties of the said office*) shall cease to be in force in such estate.

4. In this Act, unless there is something repugnant in the subject or context,—

"estate" means—,

(*a*) any permanently-settled estate, whether a zamindari, jaghir, mitta, or palaiyam;

(*b*) any portion of such permanently-settled estate which has been separately registered in the office of the Collector;

(*c*) any unsettled palaiyam or jaghir.

[1] See pp. 144-147.

(*d*) any inam village of which the grant was made or confirmed by the British Government;

(*e*) any portion consisting of one or more villages, of any of the estates specified above in clauses (*a*), (*b*), and (*c*), which is held on a permanent under-tenure.

"proprietor" means any person in whose name any estate is for the time being registered in the office of the Collector of the district wherein the estate is situated, and, in respect of an estate specified above in clause (*e*), the holder thereof;

where an estate is so registered in the names of two or more persons as joint-owners thereof, the proprietor shall, for the purposes of this Act, be the person who is recognized by the other joint owners as the manager of the estate, or who, in case of dispute, is recognized by the Collector as senior joint-owner.

If one or more villages or portions thereof in any estate be grouped or amalgamated with one or more villages or portions thereof in any other estate, the Collector shall declare which of the proprietors of the said villages shall for the purposes of the Act to be the proprietor of the new village.

"village" means any local area situated in or constituting an estate to which this Act or any portion thereof has been extended, and which is now recognized as a village, or which may hereafter be declared by Government for the purposes of this Act to be a village.

"village-office" means, in respect of any estate, an office in such estate to which this Act or any portion thereof has been extended by notification under section 2 and

"village-officer" means a person holding or discharging the duties of such office.

CHAPTER II.

VILLAGE ESTABLISHMENTS; THEIR STRENGTH, APPOINTMENT, AND CONTROL.

5. Every proprietor shall, within three months after requisition from the District Collector prepare a register containing particulars of all the village-officers and village-servants employed in his estate, and of their emoluments and duties, in a form to be prescribed by the Board of Revenue, and shall submit it to the District Collector;

Provided that the said Collector may at his discretion extend the period for the submission of the said register.

6. (1) Whenever it appears to the District Collector that, as a matter of administrative convenience, it is desirable that any portion of a village should be registered as a separate village, or that two or more villages or portions thereof should be grouped or amalgamated, he shall, by notice in writing, require the proprietor or proprietors concerned, and also the village-officers likely to be affected by the proposed change, to show cause, within three months after service of such notice, why such portion of a village should not be so registered, or such villages or portions thereof be so grouped or amalgamated.

(2) If the proprietors or the village-officers aforesaid fail to show such cause, the said Collector shall submit the records of the proceedings to the Board of

Revenue, and shall then, with the previous sanction of the said Board, declare, by notification in the District Gazette, such portion of a village of such villages or portions thereof so grouped or amalgamated to be a village for the purposes of this Act, and shall cause such notification to be published in the said village, and a copy thereof to be furnished to the proprietors. Before according such sanction the Board of Revenue shall consider any representations which may be made to it within three months of the Collector's submission of the record by the proprietors, or by the village-officers aforesaid, or by others affected.

7. In every village there shall be maintained so many and such village-officers as the District Collector, subject to the orders of the Board of Revenue, may direct.

8. Every vacancy caused by the death or resignation of a village-officer shall, within thirty days after the occurrence thereof, be reported by the proprietor to the Revenue Officer in charge of the division of the district wherein such village is situated.

9. When a vacancy has occurred in a village-office, or the District Collector directs that a village-officer shall be appointed to a newly-created village-office, the proprietor of the village shall, within six weeks, appoint a person to such vacant or newly-created village-office, and send notice of the appointment in writing in such form as the Board of Revenue may, by rules made under section 32, prescribe to the Revenue Officer in charge of the division of the district in which the village is situated.

10. In making an appointment under section 9, the proprietor shall observe the rules contained in the following sub-sections :—

(1) No person shall be eligible for appointment to any village office, who

(*a*) is not of the male sex ;

(*b*) has not attained the age of majority ;

(*c*) is not physically and mentally capable of discharging the duties of the office ;

(*d*) has not qualified according to the educational test precribed for the office in question by the Board of Revenue by rules made under section 32 ;

(*e*) has been convicted by a Criminal Court of any offence which, in the opinion of the Revenue Officer in charge of the division, or of the District Collector, disqualifies him for holding the office.

(2) The succession to all hereditary villages-offices shall devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible zamindaris in Southern India.

(3) Where the next heir to an hereditary village-office is not qualified under sub-section (1), the proprietor shall appoint the person next in order of succession who is so qualified, and, in the absence of any such person in the line of succession, may appoint any person duly qualified under sub-section (1).

11. (1) If the Revenue Officer to whom notice of appointment is sent under section 9 considers the person appointed to be disqualified under sub-section (1) of the preceding section, he may, at any time within three months from the date of the

receipt by him of the said notice of appointment, and, in cases falling under clauses (c) and (e) in sub-section (1) of section 10, after giving notice to the parties concerned, and making enquiry, record his objections, and call upon the proprietor to appoint another person, and the proprietor shall thereupon do so and send notice of such new appointment to the said Revenue Officer within six weeks after such requisition : Provided that the person first appointed by the proprietor shall discharge the duties of the office, and be entitled to the emoluments thereof until his appointment is set aside, and another person is appointed in his place.

(2) If the notice of appointment referred to in section 9, or the notice of the new appointment referred to in sub-section (1), is not received within the prescribed time, or if the person newly appointed under sub-section (1) is also considered by the said Revenue Officer, after giving notice and making enquiry as aforesaid, to be disqualified as aforesaid, such officer may make the appointment himself by selecting a person duly qualified under section 10.

(3) Whenever an appointment is disallowed under this section, an appeal shall lie to the District Collector within one month, or, if the officer disallowing the appointment is the District Collector, an appeal shall lie to the Board of Revenue within three months.

12. Where an hereditary village-office has become vacant by the dismissal or suspension of the last holder, the authority by whom he was dismissed or suspended may direct that, until the death or return to duty of such last holder, the duties of the office shall be performed by some person duly qualified under sub-section (1) of section 10, who is not an undivided member of the family of the dismissed or suspended officer, to be appointed by the proprietor subject to the approval of the Revenue Officer in charge of the division :

Provided that, when the officer who has been dismissed dies, or if the officer whe has been suspended dies while under suspension, the vacancy caused by such death shall be filled up in accordance with the provision of sub-sections (2) and (3) of section 10.

13. (1) When the person who would otherwise be entitled to succeed to an hereditary village-office is a minor, the proprietor shall submit his name to the Revenue Officer in charge of the division for registration as the heir of the last holder, and shall, at the time and subject to the approval of the said Revenue Officer, appoint some other person qualified under sub-section (1) of section 10 to discharge the duties of the office until the person registered as heir, on attaining majority, or within three years therteafter, is qualified, under sub-section (1) of section 10, to discharge the duties of the office himself, when he shall be appointed thereto by the proprietor.

If the person registered as heir under this section dies, or if he remains disqualified under sub-section 1 of section 10 for three years after attaining majority, the vacancy shall be filled up in accordance with the provisions of sub-sections (2) and (3) of section 10.

14. (1) If a vacancy is caused by the resignation, dismissal, removal, or suspension of the holder of an hereditary village office, and the authority by whom he was dismissed or suspended does not give the direction referred to in section 12, the vacancy shall be filled up in accordance with the provisions of the Act as if it had been caused by the death of the said holder provided that, upon the

expiry of the period of suspension of an officer who has been suspended, or if, for any reason, an officer, who has been dismissed, removed, or suspended, is permitted to resume the office from which he has been dismissed, removed, or suspended, the person appointed to fill the vacancy caused by the said suspension, dismissal, or removal shall cease to hold office.

(2) The provisions of section 11 shall *mutatis mutandis* apply to appointments to be made under this section and sections 12 and 13.

15. (1) When two or more villages or portions thereof are grouped or amalgamated under this Act to form a single new village, or any village is divided into two or more villages, all the village-offices of the villages or village so grouped, amalgamated, or divided shall cease to exist, and new offices, which shall be hereditary if any of the offices they replace were hereditary, shall be created for the new village or villages. In choosing persons to all such new offices, the proprietor shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished, and shall report his action to the Revenue Officer in charge of the division.

(2) If in any village two or more village-offices of any one class exist, and the District Collector, acting under section 7, considers that a reduction in the number of such offices is necessary, he shall give notice to that effect to the proprietor who shall thereupon dispense with the services of the officers no longer required, shall retain those whom he may consider to be best qualified to discharge the duties of the remaining offices, and shall report his action to the Revenue Officer in charge of the division.

(3) If the proprietor fails to submit the report referred to in sub-sections (1) and (2) within six weeks of the creation of the new offices, or of the issue of the District Collector's notice, directing a reduction in the number of village-offices, the powers vested in the proprietor by sub-sections (1) and (2) may be exercised by the Revenue Officer in charge of the division.

16. (1) A proprietor empowered in this behalf by the Board of Revenue may, after enquiry, fine any village-officer, to the extent of three rupees, for misconduct or neglect of duty as such village-officer, and shall record his reasons for so doing in writing, and furnish a copy of the same to such village-officer and to the Revenue Officer in charge of the division. An appeal shall lie within one month from the date of furnishing such copy against such fine to the said Revenue Officer whose decision shall be final.

The powers conferred under this sub-section by the Board of Revenue on any proprietor may, at any time, be withdrawn.

(2) The District Collector or Revenue Officer aforsaid may, of his own motion or on complaint and after enquiry, fine, suspend, dismiss, or remove any village, officer. for misconduct, or for neglect of duty or incapacity as such village-officer or for non-residence in the village, and shall record his reasons for so doing in writing, and furnish a copy of the same to the proprietor and to the village-officer concerned. Every village-officer convicted of an offence of the kind mentioned in sub-section (1) (e) of section 10 shall be dismissed.

(3) Against every order passed by the District Collector or Revenue Officer aforesaid under sub-section (2), an appeal shall lie to the Board of Revenue within three months, or to the District Collector within one month, as the case may be.

The decision on appeal of the Board of Revenue or the said Collector, as the case may be, shall be final: Provided that a second appeal shall lie within three months to the Board of Revenue against the order of the District Collector confirming on appeal the order of the Revenue Officer in charge of the division dismissing a village-officer.

CHAPTER III.

THE VILLAGE SERVICE CESS; ITS AMOUNT AND APPORTIONMENT AND THE METHOD AND INCIDENTS OF ITS LEVY.

17. If the remuneration of a village-office consists in whole or in part of lands, or assignments of revenue payable in respect of lands, granted or continued in respect of or annexed to such village-office by the State, the Government may enfranchise the said lands from the condition of service, by the imposition of quit-rent under the rules for the time being in force in respect of the enfranchisement of village-service inams in villages not permanently settled, or under such rules as the Government may lay down in this behalf; such enfranchisement shall take effect from such date as the government may notify;

Provided that the said enfranchisement shall be applicable to all lands or assignments as aforesaid, even though, at the time this Act comes into force, they may not be devoted to the purpose for which they were originally granted.

and provided, further, that any lands or emoluments derived from lands which may have been granted by the proprietor for the remuneration of village-service, and which are still so held or enjoyed, may be resumed by the grantor or his representative[1].

Every enfranchisement purporting to have been made under section 17 between the 1st of April 1912 and the commencement of this Act shall be deemed to have been validly made.

Section 18 to 26 were repealed by section 18 of Act III of 1914.

27. On or after the date notified under the provisions of this Chapter.

(1) if in any estate the cost of village establishments was provided for by a reduction of the permanent assessment on the condition that the amount of such reduction should be devoted to paying the village establishments, it shall be lawful for the Government to require the proprietor to pay, along with the present permanent assessment, such sum, not exceeding the amount of such reduction, as represents the annual remuneration at the time of such reduction of the classes of village-officers brought within the scope of this Act.

(2) Where the said cost of village establishments was provided for by a deduction from the assets of an estate before its permanent assessment was fixed, it shall be lawful for the Government to require the proprietor to pay, along with the present permanent assessment, a sum equal to that by which it would have been increased had no such deduction been made on account of the remuneration of the classes ef village-officers brought within the scope of this Act.

in either of the cases referred to in sub-sections (1) and (2) the proprietor shall no longer be liable for the payment of such classes of village-officers;

(3) where the cost of maintaining any office to which this Act has been extended under section 2, and which is in existence in an estate at the date upon

[1] *See* p. 161.

which this Act is extended thereto, was included in the assets upon which the permanent assessment of the estate was fixed, the said permanent assessment shall be reduced to the amount at which it would have been fixed had no such inclusion in the assets taken place.

(4) if, in any case, the rent payable to a proprietor in respect of any land has been fixed under an agreement, subsisting on the date of this Act coming into force, to the effect that any portion of the remuneration of the village-officers shall be borne by the tenant or the proprietor as the case may be, it shall be lawful for the proprietor or tenant to apply to the Collector for sanction to increase the said rent, or to demand its reduction; and the Collector shall, upon receipt of such application, and upon satisfactory proof of the justice of the claim, grant such sanction, and increase or reduce the rent to the amount at which it would have been fixed had no such agreement been entered into.

CHAPTER IV.

THE VILLAGE SERVICE FUND; ITS CONSTITUTION AND THE PAYMENT OF SALARIES THEREFROM.

29. On or after the date notified in any estate under the provisions of Chapter III the village-officers shall be paid the salaries and other allowances to which they may be entitled according to such scale, and in such manner, as may be prescribed by the Board of Revenue by rules made under section 32.

30. On or after the date notified in any estate under the provisions of Chapter III all fees, contributions, and allowances collected or demandable in such estate for the remuneration of village-officers shall absolutely cease and determine.

Whoever, thereafter, in such estate demands, collects, or receives such fees, contributions, or allowances, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees.

CHAPTER V.

GENERAL.

31. Every proprietor who wilfully omits—

(*a*) to furnish a register as required by section 5;

(*b*) to submit the name of a minor-heir as required by section 13;

(*c*) *repealed by Act III of 1914.*

shall be liable to the imposition by the District Collector of a penalty not exceeding Rs. 100 for every such omission: provided that a proprietor wilfully omitting to furnish the register required by section 5 shall be liable to a further penalty not exceeding Rs. 25 for each day during which the omission continues after the imposition of the first penalty. A penalty imposed under this section shall be recoverable in the manner provided in Madras Act II of 1864 for the recovery of arrears of land-revenue.

(2) An appeal shall lie within three months against every penalty imposed under this section to the Board of Revenue.

32. The Board of Revenue may, with the approval of Government and after previous publication, make rules not inconsistent with this Act in regard to the following matters :—

i. the division, grouping, and amalgamation of villages ;

ii. the educational qualifications required of village-officers ;

iii. the form of register to be prepared under section 5 and the form of notice of appointment to be sent under section 9 ;

iv. the salaries and other allowances to be assigned to village-officers and the method of their payment ;

v. the duties of the several village-officers, and the descriptions and forms of the accounts and registers to be kept by them ;

vi. the procedure to be followed in conducting enquiries under section 16 ;

vii. the custody, production, and transfer of the accounts and other records kept by village-officers ;

viii. the dates for payment by instalments of quit-rent and the amounts of such instalments ;

ix. any other matters calculated to enhance the efficiency of he village-service.

33. No Civil Court shall have authority to take into consideration or decide any question regarding the rates or amounts of quit-rents or payments under section 27 imposed or levied under this Act.

34. If the officer to whom an appeal is presented under this Act in the capacity of District Collector happens to be the officer who passed the decision which is appealed against in the capacity of Revenue Officer in charge of a division he shall report the fact to the Board of Revenue, and the appeal shall be disposed of by the said Board, whose decision shall be final.

THE LIMITED PROPRIETORS ACT.

ACT IV OF 1911.

An Act to amend the Law relating to Proprietors of Estates.

WHEREAS, it is expedient that certain persons who are not proprietors as defined in the Madras Proprietary Village Service Act, 1894, the Madras Hereditary Village-offices Act, 1895 and the Madras and Boundaries Act, 1897, should be enabled to exercise the powers and discharge the duties of proprietors under the said Acts and whereas it is also expedient to make provision for the recovery of arrears of revenue from such persons; it is hereby enacted as follows:—

1. This Act may be called the Limited Proprietors Act, 1911.

2. The proviso to the definition of proprietor in section 4 of the Madras Proprietary Estates' Village Service Act, 1894, and in section 3 of the Madras Survey and Boundaries Act, 1897, is hereby repealed.

3. In this Act, unless there is something repugnant in the subject or context, "Estate" and "Village" respectively mean an estate and a village as defined in the Madras Proprietary Estates Village Service Act, 1894.

4. Where any person is entitled otherwise than as owner to collect the rents of the whole of an estate or any portion thereof consisting of one or more villages by virtue of any transfer from an owner or of any decree or order of a competent Court or of any rule or provisions of law and is not a proprietor as defined in Section 1 of the Madras Proprietary Estates' Village Service Act, 1894, he may apply to the District Collector to be registered as proprietor in respect of such estate or portion for all or any of the purposes of the Madras Proprietary Estates' Village Service Act, 1894, the Madras Hereditary Village-Offices Act, 1895, and the Madras Survey and Boundaries Act, 1897.

5. (1) The District Collector shall give notice of the application to the registered proprietor and other persons as appear to him to be interested in the result of the application and, after giving them an opportunity of being heard, and making such inquiry as he thinks fit, may register the applicant as proprietor for all or any specified purposes of the said Acts or may refuse registry.

Provided that where the applicant is entitled to collect the rents by virtue of a decree or order of a competent Court or any rule or provision of law, it shall be open to the District Collector to register him as proprietor without giving notice or holding any enquiry.

(2) Subject to the provisions of sections 7, 11 and 13 and to any decree of a competent Civil Court, such registration shall remain in force so long as the applicant is entitled the collect the rent.

6. If the District Collector is satisfied that there exists a substantial dispute regarding the applicant's right to collect the rents, he shall require the applicant to establish his right in a Civil Court, unless for other reasons he is of opinion that the application should not be granted.

7. Any registration made by the District Collector under section 5 may be cancelled or varied by him at any time after notice to the persons concerned.

8. During the time that any registration under this Act remains in force in respect of an estate the person so registered shall exercise the powers and discharge the duties of a proprietor under the Madras Proprietary Estates' Village-service Act, 1894, the Madras Hereditary Village offices Act, 1895, and the Madras Survey and Boundaries Act, 1897, in such estate or portion in respect of the purposes for which he is registered, and no other person shall act or be treated as proprietor in respect of those purposes in the said estate or portion.

9. (1) Any person registered as proprietor under this Act by virtue of any transfer made after the commencement of this Act (hereinafter called the transferee) shall in relation to the Government be deemed to be a land-holder in respect of the estate or portion of an estate concerned for the purposes of the Madras Revenue Recovery Act, 1864, and shall be liable to be proceeded against under that Act for all sums which are recoverable thereunder from a land-holder and which at the time of the registration may be due on such estate or portion as the case may be, or which may become due thereon at any time while such registration remains in force.

(2) If there is any valid agreement between the owner and the transferee of a portion of an estate as to the amount recoverable in respect of such portion, the said amount shall be determined in accordance with such agreement, except where the agreement appears to the District Collector to be unreasonable. In cases where there is no such agreement, or where the agreement appears to be unreasonable, the District Collector shall fix the said amount in the manner laid down in section 45 of the Madras Revenue Recovery Act, 1864.

(3) Nothing in this section shall relieve the transferor or his legal representative from any liability under the Madras Revenue Recovery Act, 1864.

10. Where in consequence of the default of the transferee or his legal representative registered as proprietor under this Act it becomes necessary for the recovery of an arrear to proceed against the estate or portion of an estate in respect of which he is registered as proprietor, the Collector or other officer empowered by the Collector in that behalf shall cause a copy of the notice prescribed in section 36 of the Madras Revenue Recovery Act, 1864, to be served also upon the owner of the estate not less than one month before the sale.

11. Where in consequence of the default of the transferee or his legal representative registered as proprietor under this Act the owner of the estate pays the arrears due by the defaulter or any part of the estate is sold for the recovery of the arrears, the registration of the defaulter as proprietor under this Act may be cancelled by the District Collector and the defaulter shall, from the date of the cancellation and in cases where it has been appealed against from the date of the appellate order confirming the same, cease to exercise the powers and discharge the duties of a proprietor and cease to be a land-holder for the purposes of the Madras Revenue Recovery Act, 1864.

12. From the date on which any registration under this Act ceases for any cause to be in force the proprietor then registered under the Madras Land Regis-

tration Regulation 1802, or the Madras Land Revenue Assessment Act, 1876, shall possess the powers and be subject to the duties conferred and imposed upon the proprietor by the Madras Proprietary Estates' Village-service Act, 1894, the Madras Hereditary Village-offices Act, 1895, and the Madras Survey and Boundaries Act, 1897.

13. (1) The District Collector shall record his reasons in writing for every order passed by him under this Act. A copy of the order shall be despatched by register ed post to all parties affected thereby whose addresses can be ascertained.

(2) Against every such order an appeal shall lie to the Board of Revenue within two months from the date of despatch.

14. No suit or application shall lie for an injunction to restrain a District Collector from proceeding under this Act, nor shall the Secretary of State for India in Council or any officer of Government be made a party to any suit or be liable in respect of anything done or purporting to be done under this Act in good faith.

15. Subject to the approval of the Local Government the Board of Revenue may make rules not inconsistent with this Act for carrying out the purposes of the Act.

THE REVENUE RECOVERY ACT.

ACT II OF 1864.

An Act to consolidate the Laws for the recovery of Arrears of Revenue in the Madras Presidency.

WHEREAS it is advisable that the laws relating to the collection of the public revenue should be consolidated and simplified ; It is hereby enacted as follows :—

1. The term "land-holder," as used in this Act shall be taken to comprise the following persons :—

all persons holding under a sanad-i-milkiyat-istimrar, all other zemindars, shrotriyamdars, jaghirdars, inamdars, and all persons farming the land-revenue under Government; all holders of land under ryotwar settlements, or in any way subject to the payment of revenue direct to Government [1]:

"public revenue" due on land shall, for the purposes of this Act, be taken to include cesses or other dues payable to Government on account of water supplied for irrigation[2].

2. The land, the buildings upon it, and its products, shall be regarded as the security of the public revenue

3. Every land-holder shall pay to the Collector, or other officer empowered by him to receive it, the revenue due upon his land on or before the day on which it falls due, according to the kistbandi or other engagement, and where no particular day is fixed, then within the time when the payment falls due according to local usage: provided that, except where property is held under a sanad-i-milkiyat-i-istimrar or other similar instrument, it shall be lawful for the Board of Revenue, by notification published in the District Gazette, to alter and fix from time to time the amount of the several kists or instalments, and the dates at which they shall respectively become payable.

4. When the whole or a portion of a kist shall not be so paid, the amount of the kist or of its unpaid portion shall be deemed to be an arrear of revenue.

5. Whenever revenue may be in arrear, it shall be lawful for the Collector or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided[3].

6. If the defaulter hold under a sanad-i-milkiyat-i-istimrar or other similar instrument, the mode of recovering the arrear shall be in accordance with the terms of such sanad. In the case of other defaulters, the Collector, or other officer empowered by the Collector in that behalf may, at his discretion, proceed to realize the arrear by the sale of either the moveable or immoveable property of the defaulter, or of both[4].

[1] Mulgar and not mulgenigar is land-holder, *Vidyapurna Tirthaswami* v. *Uggannu*, 34 Mad. 231.

[2] See p. 271.

[3] Meaning of defaulter, 260-261.

[4] See p. 261.

7. Arrears of revenue shall bear interest at the rate of six per cent per annum.

8. In the seizure and sale of moveable property for arrears of revenue, the following rules shall be observed—[1]:

First.—The Collector,[1] or other officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrear fell due. The person employed to distrain shall produce the writing, which, if the arrear together with the batta due to him, under section 53, be not at once paid, shall be his authority for making the distress, and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained, and the name of the place where it may be lodged or kept.

Second.—The writing shall further set forth that the distrained property will be immediately brought to public sale, unless the amount with interest, batta, and all the expenses of the distress, be previously discharged.

Third.—When a defaulter may be absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence, or on the premises where the property may have been distrained, before the expiration of the third day, calculating from the day of the distress.

9. When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into, to the satisfaction of the Collector or other officer empowered by the Collector in that behalf, the distrainer shall transmit an inventory of the property distrained to the nearest public officer empowered to sell distrained property under Act VII of 1839 in order that it may be publicly sold for the discharge of the arrear due, with interest, batta and cost of distraint.

10. Where a defaulter may tender payment of the arrear demanded after his property may have been distrained, and prior to the day fixed for sale, together with payment of interest, batta, and all necessary expenses attending distress, the distrainer shall receive the amount immediately upon the same being tendered, and shall forthwith release the property.

11. The distrainer attaching the crops or ungathered products of the land belonging to a defaulter, may cause them to be sold when fit for reaping or gathering, or at his option may cause them to be reaped or gathered in due season, and stored in proper places until sold. In the latter case, the expense of reaping or gathering and storing such crops or products shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold. When crops or products belonging to a tenant shall have been sold, it shall be lawful for such tenant to deduct the value of the crops or products so sold from any rent which may be due by him, then or afterwards, to the defaulter, in respect of the land on which such crops or products have been grown. It shall also be lawful for a tenant whose crops are attached for an arrear of revenue to pay the arrear and deduct the amount in the aforesaid manner from any rent due by him, then or afterwards.

12. The distrainer shall not work the bullocks or cattle, or make use of the goods or effects distrained; he shall provide the necessary food for the cattle

[1] See pp. 262-264.

or live stock, the expense attending which shall be defrayed by the owner upon his redeeming the property, or from the sale in the event of its being sold.

13. Where property distrained may be stolen, or lost, or damaged by reason of the necessary precautions for its due preservation not having been taken, or from its having been improperly worked or made use of, the amount of such loss or damage shall be recoverable by summary process by the Collector from the officer whose neglect or act occasioned the loss or damage, and the amount when recovered shall be paid to the person damnified.

14 The distress levied shall not be excessive, that is to say, the property distrained shall be as nearly as possible proportionate to the amount of the arrears.

15. Distress shall be made after sunrise and before sunset, and not otherwise.

16. When a defaulter may make a fraudulent conveyance of property to prevent the distress of arrears, any Civil Court of competent jurisdiction, upon proof thereof, shall summarily cause the property to be delivered up to the distrainer. The defaulter will further be liable to the penalties prescribed by section 424 of the Indian Penal Code.

17. Where any person, not being a defaulter or responsible for a defaulter may claim a right to the property distrained, and the distrainer may notwithstanding cause the same to be sold, such claimant, on proof of such right in any Civil Court of competent jurisdiction, and in the event of the distrainer being unable to prove the responsibility for the arrear of revenue on account of which the property may have been sold, shall recover from the distrainer the full value of such property, with interest, costs and damages, according to the circumstances of the case. But claims to crops upon the ground, or to gathered products of the ground attached, in the possession of the defaulter, whether founded upon a previous sale, mortgage or otherwise, shall not bar the prior claim of revenue due from the ground upon which such crop or product may have been grown.

18. Where it may be proved to the satisfaction of any Civil Court of competent jurisdiction that any person has forcibly or clandestinely taken away property once distrained, the Court may summarily cause such property to be restored to the distrainer. The offender will further be liable to the penalties prescribed by the Indian Penal Code.

19. It shall be lawful for the distrainer to force open any stable, cow-house, granary, godown, out-house or other building, and he may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of attaching property belonging to a defaulter and lodged therein; provided always that it shall not be lawful for such distrainer to break open or enter any apartment in such dwelling-house appropriated for the zenana or residence of women, except as hereinafter provided.

20. Where a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling-house the outer door of which may be shut or within any apartments appropriated to women, which, by the usage of the country, are considered private, such distrainer shall represent the same to the officer in charge of the nearest police-station. On such representation, the officer in charge of the said station shall send a Police Officer to the spot, in the presence of whom the distrainer may force open the outer door of such dwelling-house, in like manner as he may break open

the door of any room within the house except the zenana. The distrainer may also, in the presence of the Police Officer, after due notice given for the removal of women within a zenana, and after furnishing means for their removal in a suitable manner (if they be women of rank, who, according to the customs of the country, cannot appear in public), enter the zenana apartments for the purpose of distraining the defaulter's property deposited therein, but such property, if found, shall be immediately removed from such apartments, after which they shall be left free to the former occupants.

21. Persons entering the apartments of women, or forcing open the outer door of dwelling-houses, contrary to the provisions of this Act, shall, on conviction before a Magistrate, be liable to a fine not exceeding Rs. 500, or to imprisonment of either description for any period not exceeding six months.

22. The public officer empowered under Act VII of 1839 to sell distrained property shall cause to be affixed to the outer door of the defaulter's house, or on the premises where the property may have been distrained, a list of the property to be sold, with a notice specifying the place where, and the day and hour at which, the distrained property will be sold, and shall cause proclamation of the intended sale to be made by beat of drum in the village to which the lands on which the arrear has accrued may belong, and in such place or places as the Collector, or other officer empowered by the Collector in that behalf, may consider necessary to give due publicity to the sale. No sale shall take place until after the expiration of a period of fifteen days from the date on which the notice may be so affixed.

23. At the appointed time, the property shall be put up in one or more lots, as the said officer may consider advisable, and shall be disposed of to the highest bidder. Where the property may sell for more than the amount of the arrear, the overplus, after deducting expenses of process and interest, shall be paid to the defaulter.

24. The property shall be paid for in ready money at the time of sale, or as soon after as the officer holding the sale shall appoint and the purchaser shall not be permitted to carry away any part of the property until he has paid for the same in full.

Where the purchaser may fail in the payment of the purchase-money, the property shall be re-sold and the defaulting purchaser shall be liable for any loss arising, as well as the expenses incurred on the re-sale.

Where the property may, on the second sale, sell for a higher price than at the first sale, the difference or increase shall be the property of him on whose account the said first sale was made.

25. Before a Collector, or other officer empowered by the Collector in that behalf, proceeds to attach the land of a defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for the payment, which shall be fixed with reference to the distance from the land on which the arrear is due to the place at which the money is to be paid [1].

Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorised agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached [2].

[1] See pp. 264-271. [2] See p. 266.

26. When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into to the satisfaction of the Collector, or other officer empowered by the Collector in that behalf, he shall proceed to recover the arrear by the attachment and sale of the defaulter's land in the following manner.

27. The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land. The notice shall set forth that unless the arrear, with interest and expenses, be paid within the date therein mentioned the land will be brought to sale in due course of law. The attachment shall be notified by public proclamation on the land, and by publication of the notice in the District Gazette.

28. It shall be lawful for the Collector, when attaching the land of a defaulter, or at any time during such attachment, to assume the management of the property attached.

In such case he shall appoint an agent with a proper establishment of officers to manage the property, and shall give the agent a certificate of appointment, with written instructions under his seal and signature, and the expenses of management shall be defrayed out of the income of the property : provided always, that where the property may be too inconsiderable to admit of its being charged with the salary of an agent, it shall be committed to the care of such Revenue Officer as the Collector may select, who shall be subject to all the provisions herein contained in reference to agents.

29. Notice of the assumption of management shall forthwith be served on the defaulter in the manner described in section 25, and shall be notified by public proclamation on the land and by publication in the District Gazette.

30. It shall be the duty of the agent during the continuance of management under section 28, to collect the rents and profits due, or accruing due, upon the estate, according to the engagements subsisting between the defaulter and the parties holding under him, or according to established usage where no specific engagements exist.

The agent shall keep accounts of all receipts and disbursements, and submit the same, and pay over the balance, to the Collector, or other officer empowered by the Collector in that behalf, monthly, or whenever required, and the defaulter shall be at liberty to inspect the accounts at all reasonable times, and to take copies of the same at his own expense without fee.

31. It shall be lawful for the defaulter to proceed by prosecution or suit against the agent, in respect of any criminal, or illegal act done by him to the injury of the defaulter or his estate, and all tenants or other persons holding by subordinate title shall have the same remedies against him as they would have had against the defaulter if the act were done by the defaulter.

32. All engagements entered into between the land-holder add his tenants, except such as are hereinafter mentioned, shall be binding upon the Collector during attachment, but all such engagements made collusively with a view to defeat or delay the effect of the attachment, and all leases of land at a rate lower than the usual rates of assessment, and not made *bona fide* for the purpose of erecting factories or buildings, or of bringing waste land into cultivation, and all engagements made subsequently to attachment, shall be null and void against the Collector, if he shall so declare; subject, however, to the right of the parties to such agreement to bring a suit against the Collector in the ordinary tribunals to

establish the same; and all charges or incumbrances upon such land shall bs postponed to the payment of the public revenue.

33. All payments on account of rent or profits actually due, made before public notice of assumption of management, to or on behalf of any land-holder by any person holding under him, shall be valid against the Collector, and all such payments made after public notice of such assumption, or made before they were actually due, shall be null and void against the Collector, who shall be entitled to recover as arrears of rent the full amount from the parties by whom it was paid, leaving them to sue the defaulter in the ordinary Courts of law.

34. All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due, and interest thereon at the rate of six per cent per annum; and as soon as all arrears, interest, costs of attachment and expense of management shall have been liquidated, the attachment shall be withdrawn and a full account rendered of all receipts and disbursements during its continuance.

35. It shall be lawful for any person claiming an interest in land which has been, or is about to be attached, to obtain its release by paying the arrears, interest and costs incurred; and all such sums, if paid by a tenant, may be deducted from any rent then or afterwards due by him to the defaulter; and if paid by a *bona fide* mortgagee or other incumbrancer upon the estate, or by any person not being in possession thereof, but *bona fide* claiming an interest therein adverse to the defaulter, shall be a charge upon the land, but shall only take priority over other charges according to the date at which the payment was made. Such sums when paid by a *bonafide* mortgagee or other incumbrancer, shall further constitute a debt from the defaulter.

36. In the sale of immoveable property under this Act, the following rules shall be observed:—

First.—The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Collector of the district in which the property is situated or other officer empowered by the Collector in that behalf, The time may be either previous to or after the expiration of the Fasli year.

Second.—Previous to the sale the Collector, or other officer empowered by the Collector in that behalf, shall issue a notice thereof in English and in the language of the district, specifying the name of the defaulter; the position and extent of land and of his buildings thereon; the amount of revenue assessed on the land or upon its different sections; the proportion of the public revenue due during the remainder of the current Fasli; and the time, place and conditions of the sale. This notice shall be fixed up one month at least before the sale in the Collector's Office and in the Taluk Cutcherry, in the nearest Police Station-house, and on some conspicuous part of the land.

Third.—A sum of money equal to fifteen per cent of the price of the land shall be deposited by the purchaser in the hands of the Collector, or other officer empowered by the Collector in that behalf, at the time of the purchase, and where the remainder of the purchase-money may not be paid within thirty days, the money so deposited shall be liable to forfeiture.

Fourth.—Where the purchaser may refuse or omit to deposit the said sum of money, or to complete the payment of the remaining purchase-money, the property shall be re-sold at the expense and hazard of such purchaser, and the amount of all loss or expense which may attend such refusal or omission shall be recoverable from such purchaser in the same manner as arrears of public revenue. Where the lands may, on the second sale, sell for a higher price than at the first sale, the difference or increase shall be the property of him on whose account the said first sale was made.

Fifth.—All persons bidding at a sale may be required to state whether they are bidding on their own behalf or as agents, and in the latter case to deposit a written authority signed by their principals. If such requisition be not complied with, their bids may be rejected.

37. It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate, or in taking the steps necessary for sale, and thereupon the sale shall be stayed [1]:

Provided always that such tender must be made before sunset on the day previous to that appointed for the sale, and all sums paid under this or the next succeeding section by any tenant, or *bona fide* mortgagee, or other incumbrancer, or any person *bona fide* claiming an interest in the estate adverse to the defaulter may be recovered in the manner provided in section 35.

37-A. (1) Any person owning or claiming an interest in immoveable property sold under this Act may, at any time within thirty days from the date of sale deposit in the treasury of the taluq in which the immoveable property is situated.

(*a*) A sum equal to five *per centum* of the purchase money,

(*b*) A sum equal to the arrears of revenue for which the immoveable property was sold together with interest thereon and the expenses of attachment, management, and sale and other costs also in respect of such arrears,

and may apply to the Collector to set aside the sale.

(2) If such deposit and application are made within thirty days from the date of sale, Collector shall pass an order setting aside the sale and shall repay to the purchaser the purchase money so far as it has been deposited together with the five *per centum* deposited by the applicant:

Provided that if more persons than one have made the deposit and application under this section, the application of the first depositor to the officer authorised to set aside the sale shall be accepted.

(3) If a person applies under section 38 to set aside the sale of immoveable property, he shall not, unless he withdraws such application, be entitled to make an application under this section.

38. (1) At any time within thirty days from the date of the sale of immoveable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake, or fraud in publishing or conducting it; but except as otherwise is hereinafter provided, no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

[1] *See* p. 268.

(2) If the application be allowed, the Collector shall set aside the sale and may direct a fresh one.

(3) On the expiration of thirty days from the date of the sale, if no application to have the sale set aside is made under section 37 A or under clause (1) of this section, or if such application has been made and rejected, the Collector shall make an order confirming the sale : provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

(4) Whenever the sale of any lands is not so confirmed or is set aside, the deposit of the purchase-money, as the case may be, shall be returned to the purchaser.

(5) After the confirmation of any such sale, the Collector shall register the lands sold in the name of the person declared to be the purchaser, and shall execute and grant a certificate of sale bearing his seal and signature to such purchaser.

Such certificate shall state the property sold and the name of the purchaser and it shall be conclusive evidence of the fact of the purchase in all Courts and tribunals, where it may be necessary to prove the same : and no proof of the Collector's seal or signature suall be necessary, unless the authority before whom it is produced shall have reason to doubt in its genuineness.

39. When lands may be purchased at public sale, the Collector, or other officer empowered by the Collector in that behalf, shall publish in the villages in which the land sold may be situated, in the cutchery of the Taluq, in the head cutchery of the district, and in the District Gazette, the name of the purchaser and the date of purchase, together with a declaration of the lawful succession of such purchaser to all the rights and property of the former land-holder in the said lands.

40. Where, notwithstanding such publication, any lawful purchaser of land may be resisted and prevented from obtaining possession of his purchased land, any Court of competent jurisdiction, on application and production of certificate of sale provided for by section 38, shall cause the proper process to be issued for the purpose of putting such purchaser in possession, in the same manner as if the purchased lands had been decreed to the purchaser by a decision of the Court.

41. All contracts entered into by the defaulter with his tenants, and all payments to him by them, shall be binding upon the purchaser to the same extent and under the same conditions as laid down in section 32 and 33 of this Act [1].

42. All lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances, and if any balance shall remain after liquidating the arrears with interest, and the expenses of attachment and sale, and other costs due in respect of such arrears, it shall be paid over to the defaulter, unless such payment be prohibited by the injunction of a Court of competent jurisdiction[2].

43. Arrears of rent which on the day of sale may be due to the defaulter from his under-tenants shall, in the event of the sale, be recoverable by him after the sale by any process, except distraint, which might have been used by him for that purpose before the said sale.

[1] See p. 270. [2] See pp. 270, 271.

44. It shall be lawful for the Collector or, other officer empowered by the Collector in that behalf, to sell the whole or any portion of the land of a defaulter in discharge of arrears of revenue: provided always that, so far as may be practicable, no large section in the land shall be sold than may be sufficient to discharge the arrears with interest, and expenses of attachment, management and sale.

45. Where only a part of a landed estate held under a sanad-i-milkiyat-istimrar, or otherwise subject to the payment of a lump assessment may be sold, the assessment upon such part shall be apportioned by the Collector previous to sale in manner following:—

The amount of revenue to be assessed on each division shall bear the same proportion to the actual value of such division as the total amount of the revenue of the whole estate may bear to the total actual value of the entire estate previous to such division.

To this end the Collector shall have power to demand from land-holders and from the karnams of villages accounts of the produce and of the charges attending the managements of lands to be divided; such land-holders and karnams shall furnish the said accounts when required for a period of not less than three years next preceding the then current year; where the land-holder may refuse or unreasonably delay to comply with such demand, so as to prevent the assessment being fixed on such divided portions of land, the Collector shall proceed to sell the entire estate.

46. *Repealed by Act VIII of 1914.*

47. When a defaulter tenders security, it shall be lawful for the Collector, or other officers empowered by the Collector in that behalf, to accept it and postpone the sale of the defaulter's property upon such conditions, and until such time, as he may appoint; in the event of default being made in the performance of such conditions, the Collector or such officer may sell the property and proceed against the defaulter, or against his security, or both.

48. When arrears of revenue, with interest and the other charges as aforesaid cannot be liquidated by the sale of the property of the defaulter, or of his surety, and the Collector shall have reason to believe that the defaulter or his surety is wilfully withholding payment of the arrears, or has been guilty of fraudulent conduct in order to evade payment, it shall be lawful for him to cause the arrest and imprisonment of the defaulter, or his surety, not being a female, as hereinafter mentioned; but no person shall be imprisoned on account of an arrear of revenue for a longer period than two years, or for a longer period than six months if the arrear does not exceed Rs. 500, or for a longer period than three months if the arrear does not exceed Rs. 50; provided that such imprisonment shall not extinguish the debt due to Government by the defaulter or his surety.

49. The Collector shall issue his warrant for the arrest of the defaulter, or his surety, or both, not being females, which shall specify his or their name, the amount of revenue due, and the date on which it became payable, and the warrant shall be signed and sealed by the authority by whom it was issued.

The officer charged with the execution of the warrant shall thereupon arrest the defaulter, or his surety, or both, and convey him or them to the district gaol, and deliver the warrant to the gaoler, which shall be a sufficient authority to him to receive the prisoner or prisoners.

A copy of such warrant shall be retained by the gaoler, who shall forthwith despatch the original to the officer in charge of the gaol.

50. All the remedies prescribed by this Act in case of the revenue defaulters may be employed against their sureties, and it shall be lawful for the Collector or other officer empowered by the Collector in that behalf, to enforce the same simultaneously with, or either previously or subsequently to, their enforcement against the principal; so, nevertheless, that no more than the total sum in arrears, and interest with costs and charges, shall be realized from both.

51. When land revenue is payable in kind, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to prevent the removal of the crop from the land until a division has been made and the portion which belongs to Government has been set apart, unless the land-holder furnishes such security as the Collector may deem satisfactory.

52. All arrears of revenue other than land-revenue due to Government, all advances made by Government for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed in revenue or police duties, and all cases lawfully imposed upon land, may be recovered in the same manner as arrears of land-revenue under the provisions of this Act, unless the recovery thereof shall have been or may hereafter be otherwise specially provided for[1].

53. Persons employed in serving notices or in other proceses under this Act shall be entitled to batta at such rates as may from time to time be fixed by the Board of Revenue with the sanction of Government, and published in the District Gazette.

54. The batta mentioned in the foregoing section, as well as interest, and all costs and charges incurred under the authority of this Act, shall be recoverable from the defaulter and his sureties in the same manner as arrears of revenue.

55. Where property having been attached or distrained may be ordered to be put up for sale, and the sale may be countermanded, the proprietor shall nevertheless be responsible for the expenses incurred in consequence of the attachment or distraint, in the same manner as if the sale had taken place; and in the event of such proprietor omitting to discharge the amount, it shall be recoverable by the process under which the original demand would have been recoverable.

56. Every person making a payment of revenue shall be entitled to a receipt for the same, signed by the Collector, or other officer empowered by the Collector in that behalf; such receipt shall state the name of the person making the payment and the subject-matter in respect of which it is paid, and in the case of land-revenue shall describe the land on which the assessment is due, and the names of persons entered in respect thereof in the settlement account.

57. Where a defaulter or his surety may reside or hold property out of the district wherein default shall have been made, the Collector of the district in which such defaulter or surety resides or holds property shall, on the written application of the Collector in whose district such default has been made, proceed in all respects against the defaulter and his surety, and his or their property, in the same manner as if the default had been made in his own district.

Every such application shall be signed and sealed by the Collector making it, and shall be conclusive as to the amount due, and the party in arrear, in all

[1] *See* p. 271.

proceedings against the Collector acting upon such application or any person acting under his authority; and no proof of the seal or signature or official character of the Collector making the application shall be required, unless the Court shall see reason to doubt its genuineness: provided always, that nothing herein contained shall affect the right of any party to sue in his own district the Collector who made the application.

A Collector may delegate all or any of his powers and duties under this section to any subordinate revenue officer not below the rank of a Deputy Tahsildar.

58. No Court of Civil Judicature shall have authority to take into consideration or decide any question as to rate of land revenue payable to Government, or as to the amount of assessment fixed, or to be hereafter fixed, on the portions of a divided estate[1].

59. Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act, except as hereinbefore provided, from applying to the Civil Courts for redress: provided that Civil Courts shall not take cognizance of any suit instituted by such parties for any such cause of action, unless such suit shall be instituted within six months from the time at which the cause of action arose[2].

60. No suit brought against any Collector by any person deeming himself aggrieved by anything done or purporting to be done under this Act, shall abate by reason of the departure from his district of the Collector against whom such suit shall have been brought; but the suit shall be continued against the successor of such Collector in all respects as though it had been instituted against himself.

A suit may be brought against any Collector in his official capacity on account of anything done or purporting to have been done under this Act by his predecessor, subject to the limitation prescribed in the preceding section: provided that no Collector shall be personally liable for any official act of his predecessor.

61. Regulation V of 1822 shall not be applicable to sales of property under this Act.

62. Regulation XXVIII of 1802, and Regulations I and II of 1803 shall be inoperative as respects arrears of revenue recoverable under this Act.

63. Nothing in this Act shall be held to bar the operation of the provisions of Regulation V of 1804, and of Regulation X of 1831, in respect to the sale of lands of minors and other disqualified land-holders.

64. Nothing in this Act shall apply to the collection of land-revenue within the limits of the Town of Madras, as defined by section 12, Regulation II of 1802 of the Madras Code.

65. [*Repealed by Act XII of 1873.*]

66. [*Repealed by Act XII of 1873.*]

---

[1] *See* p. 59.

[2] *See* pp. 271—272.

THE REVENUE RECOVERY ACT.

ACT I OF 1890.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

An act to make better provision for recovering certain public demands.

WHEREAS, it is expedient to make better provision for recovering certain public demands ; It is hereby enacted as follows :—

1. (1) This Act may be called the Revenue Recovery Act, 1890.

(2) It extends to the whole of British India and British Baluchistan and

(3) It shall come into force at once.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) " district" includes a presidency-town ;

(2) "collector" means the chief officer in charge of the land-revenue administration of a district ; and

(3) " defaulter " means a person from whom an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum.

3. (1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule, stating—

(*a*) the name of the defaulter and such other particulars as may be necessary for his identification, and

(*b*) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

4. (1) When the proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may if he denies his liability to pay the amount or any part thereof and pays the

same and protest made in writing at the time of payment and signed by him or his agent, institute a suit for the re-payment of the amount or the part thereof so paid.

(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

5. Where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this act as if the sum were payable to himself.

6. (1) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immovable property belonging to the defaulter in the district.

(2) The Collector may at any time, by order in writing, withdraw the proclamation, and it shall be deemed to be withdrawn when either the amount stated in the certificate has been recovered or the property has been sold for the recovery of that amount.

(3) Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gifts, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof shall be void as against the Government and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate.

(4) Subject to the foregoing provisions of this section, when proceedings are taken against any immovable property under this Act for the recovery of an amount stated in a certificate, the interests of the defaulter alone therein shall be so proceeded against and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of proceedings being taken against those interests.

(5) A proclamation under this section shall be made by beat of drum or other customary method and by the posting of a copy thereof on a conspicuous place in or near the property to which it relates.

7. Nothing in the foregoing section shall be construed—

(*a*) to impair any security provided by, or affect the provisions of, any other enactment for the time being in force for the recovery of land-revenue or sums recoverable as arrears of land-revenue, or

(*b*) to authorise the arrest of any person for the recovery of any tax payable to the corporation, commissioner, committee, board, council or person having authority over a municipality under any enactment for the time being in force.

8. When this Act has been applied to any local area which is under the administration of the Governor-General in Council, but which is not part of British India, an arrear of land-revenue accruing in that local area, or a sum recoverable as an arrear of land-revenue and payable to a Collector or other public officer or to a local authority in that local area, may be recovered under this Act in British India.

THE SCHEDULE.

CERTIFICATE.

[*See section 3, sub-section (1)*].

From

The Collector of

To

Collector of

Dated the of 18

The sum of Rs. is payable on account of by , son of , resident of , who is believed (to be at) (to have property consisting of at) in your district.

Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit to my office at

A. B.,

Collector of......

REVENUE RECOVERY (MILITARY PROPRIETORS) ACT.

REGULATION VIII OF 1817.

PASSED ON THE 9th DECEMBER 1817.

A regulation for regulating the procedure where the estate of a native officer or soldier in the Madras Command becomes liable to sale for an Arrear of Revenue.

1.—8. [*Repealed by Act No. X of 1861.*]

9. *First.*—Any registered proprietor of an estate paying revenue to Government, who may be entertained as a Native officer or soldier in the Madras Command, shall be at liberty to notify to the Collector the rank which he may hold and the designation of the corps to which he may be attached. A record of such notification shall be inserted by the Collector in the public registers and accounts relative to the estate and its assessment; and in cases in which the estate, or a portion of the estate, of a Native officer or soldier who may have made such notification, shall become liable to public sale for the recovery of an arrear of revenue, the Collector shall address an official letter to the Commanding officer of the corps, drawn in the form prescribed in No. 5 of the Appendix to this Regulation, and shall enclose in such letter a written notice, signed and sealed by himself and attested by the principal Native officer on his establishment, specifying the amount of the arrear and the date on which it became due, and requiring that it be paid at the treasury of the Collectorship within such limited period of time as, on consideration of the distance at which the corps may be stationed, and other circumstances of the case, may appear to be proper and reasonable.

Second.—The commanding officer of the corps shall acknowledge to the Collector the receipt of his letter, and shall specify the date on which the notice may have been communicated to the party, or the circumstances which may have rendered it impracticable to make such communication.

Third.—If the Native officer or soldier shall omit to discharge the arrear within the term specified in the notice, the Collector shall report the circumstances of the case to the Board of Revenue transmitting at the same time a copy of the notice and of his correspondence with the Commanding officer, and shall be guided in his further proceedings by the orders which he may receive in each case from the Board.

10. [*Repealed by Act X of 1861*].

APPENDIX.

[*Forms Nos. 1 to 4, repealed by Act XII of 1876*]

Form No. 5.

To

Commanding Officer of the Bat Regt.

Sir,

I have the honor to inform you that the right of (A. B.) in the village (or estate) of is about to be sold on account of arrears of public revenue for the year

In conformity with clause 1st, section 9, Regulation VIII, 1817, I herewith enclose a written notice to, be communicated to,————said to be an officer (or sepoy) in the corps under your command and who is alleged to be the proprietor (or sharer) of the village (or estate) in question.

You are requested to acknowledge the receipt of this letter, and to state on what day the notice may have been communicated by you to the said or, circumstances which may have rendered it impracticable to make such communication.

I am, Sir, &c.,

....

Dewanny Adalat,

Judge.

MADRAS CITY LAND REVENUE ACT.

ACT XII OF 1851.

PASSED ON THE 14TH NOVEMBER, 1851.

An Act for securing the Land Revenue of Madras.

WHEREAS it is expedient that the land-revenue accruing due to the East India Company at Madras, within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras, should be ascertained and collected in as summary a manner as in other parts of the territories under the Government of the East India Company ; It is enacted as follows :—

1. All assessable lands not the property of the East India Company, within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras of which the rate of assessment is not known, or which have not heretofore been assessed, shall be assessed at the rates customarily charged upon lands of a similar description in the neighbourhood, according as they may be situated respectively within or without the walls of Black Town.

2. Lakhiraj tenures of land in Madras, of which uninterrupted possession has been held under alleged grants, exempt or partially exempt from assessment for sixty years, shall be valid ; no other lakhiraj tenures of land in Madras shall be deemed valid, unless the same are or shall be held under an unexpired grant from the British Government.

3. The Collector of Madras shall determine the rate of assessment to be laid on assessable land under section 1 of this Act, with reference to the rate assessed upon other land of a similar description in the neighbourhood, subject to an appeal to the Board of Revenue, to be made within six months from the notification by the Collector of the assessment fixed by him. The decision of the Board of Revenue upon such appeal shall be final[1].

4. The Collector may order any assessable land, or land already assessed or charged with a rent payable to the East India Company, to be measured, for the purpose of determining the amount of assessment to be imposed, or in the case of land already assessed or charged with a rent, for the purpose of ascertaining whether the actual dimensions, and the dimensions upon which the amount of assessment of rent was calculated, correspond.

5. Whenever, upon the measurement of any land under the preceding section, it shall be found that the dimensions upon which the amount of assessment or rent was calculated exceed the actual dimensions, a proportionate abatement shall be made for the excess, on the demand of the party entitled to claim it.

6. On the other hand, when the actual dimensions exceed the dimensions upon which the amount of assessment or rent was calculated, the excess shall be

[1] Jurisdiction of Civil Courts in respect of assessment imposed under the Act, *Muthayya Chetti* v. *The Secretary of State*, 22 Mad. 100.

charged at the same rate as the rest of the land, the possession being left undisturbed: Provided that, when it shall appear that the excess has been caused by the surreptitious usurpation of ground belonging to another tenure, the act of the Collector in assessing it shall not prejudice the holder of such other tenure in any effort he may make to recover the ground usurped from it.

An appeal shall lie to the Board of Revenue against any extra assessment or additional rent charged by the Collector for excess by measurement under this section, if preferred within six months from the date of the Collector's order. Upon such appeal the decision of the Board of Revenue shall be final.

7. [*Repealed by Madras Act VI of 1867.*]

8. In the case of payment by any tenant or occupier not holding immediately under the East India Company, or the seizure and sale of his property, he may deduct the amount of the payment or levy from the next payment of rent to his landlord.

9. The claim of the East India Company for land-revenue or rent has priority over all other claims upon the land, or to which property distrained upon the land may be liable.

10. If the Collector's claim for arrears of rent is disputed, the process of distraint and sale shall not be stayed, unless the amount claimed be lodged with the Collector.

11. Arrears of rent or revenue due to the East India Company are recoverable within six years next after the same are due, or next after an acknowledgment of the same in writing has been given by the person by whom the same is payable, or his agent, and not afterwards.

12. When a claim to hold land lakhiraj, or free of assessment, shall be set up under this Act, the Collector shall inquire into the claim, taking such evidence as the claimant may offer, or the public records supply, and shall report his proceedings in the case for the consideration of the Board of Revenue.

If the Board of Revenue are satisfied of the validity of the claim, they shall make an order accordingly and such order shall be final. If they are not satisfied of the validity of the claim, they shall direct the Collector to assess the land, leaving the claimant to contest the Collector's demand in the Civil Courts, as herein provided.

13. Any person obstructing or molesting the Collector or any of his subordinate officers in the execution of their duty shall, on conviction before a Magistrate of the town of Madras, be liable to a fine not exceeding five hundred rupees, and in default of payment, to imprisonment in the common gaol for a term not exceeding six months, or until the fine is sooner paid.

14. The Collector may punish any contempt committed in his presence in open cutcherry or office, by fine not exceeding two hundred rupees, and in default of payment, by imprisonment in the common gaol for a term not exceeding one month.

From every such order of fine or imprisonment, an appeal shall lie to the Board of Revenue, whose decision shall be final.

15. The Collector shall act in the execution of this Act under the usual control of the superior revenue authorities.

16. The ground-rents payable to the East India Company from lands in Madras are revenue within the meaning of the Act of Parliament, 21 Geo. III., Cap. 70, and Supreme Court of Judicature established by Royal Charter at Madras has not any civil jurisdiction concerning the said ground-rents, or concerning anything ordered or done in the assessment or collection thereof.

17. All actions concerning any trespass or injury committed by any revenue officer acting under colour of this Act, or concerning any claim in respect of any goods taken by, or any monies paid to, any revenue officer under this Act, or concerning any claim of rent or revenue on the part of the East India Company under this Act, shall be tried and determined in the Civil Courts established by the East India Company in the zillah of Chingleput, notwithstanding that the cause of action in respect of which such action is brought arose, or the defendant therein reside, within the limits of the town of Madras, and every such action shall be brought within six months after the cause of action arose, and not afterwards.

18. The words "Collector" and "Board of Revenue" used in this Act shall be taken to mean any person or persons lawfully appointed to exercise the powers vested in the Collector and Board of Revenue respectively under this Act.

MADRAS CITY LAND REVENUE AMENDMENT ACT.

ACT VI OF 1867.

PASSED ON THE 27th JUNE 1867.

An Act to Amend Act XII of 1851, (An Act for securing the Land Revenue of Madras.)

WHEREAS, in the preamble to Act XII of 1851, it is declared to be expedient that the land revenue accruing due to the Government of India within the town of Madras should be ascertained and collected in as summary a manner as in other parts of the territories under the said Government, and it is enacted in section 9 of the said Act that the claim of Government for land-revenue has priority over all claims upon the land; and whereas in other parts of the said territories the land itself is the security for the revenue assessed thereon, and is liable to be sold for the discharge of arrears, and there is no sufficient reason for exempting lands situated within the town of Madras from the same liability; and whereas it is expedient to give additional powers to the distraining officer appointed by the Collector of Madras under section 7 of the said Act; It is hereby enacted as follows :—

1. The word "revenue," as used in this Act, shall mean assessment, quit-rent, ground-rent or other charge upon the land payable to the Government.

2. (*Repealed by Act No. XII of 1873.*)

3. The land and the buildings thereon shall be regarded as the security of the public revenue.

4. Whenever any owner, tenant or occupier of land subject to the payment of revenue to the Government, or whenever any person holding such land, shall, upon the written demand of the Collector, or of any officer duly empowered to act on the Collector's behalf, refuse or neglect to pay any sum with which the land is charged as revenue, the Collector shall proceed for the recovery of such revenue by distress and sale of the moveable property of the owner wherever found, or, in the case of the tenant or occupier or holder of the land, by distress and sale of any moveable property found upon such land.

If, however, the Collector shall not be able to recover the arrears due by distress and sale of the moveable property as aforesaid, it shall be lawful for the Collector to cause the land and buildings theron to be sold for the arrear which has accrued due thereon, in the manner hereinafter provided.

5. Arrears of revenue accruing on land within the town of Madras shall bear interest at the rate of six per cent per annum.

6. In the seizure and sale of moveable property for arrears of revenue, the following rules shall be observed ;—

1st.—The Collector shall employ a person, hereinafter called the distraining officer, to distrain the property, and shall furnish to such officer a demand in writing, signed by the Collector, or by some officer empowered by him in that behalf, specifying the amount of the arrear for which the distress shall be issued, and the date on which the arrear fell due.

2nd.—The distraining officer shall produce the writing as authority for making the distress, and on the day on which the property shall be distrained shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained, and the name of the place where the property may be lodged or kept.

3rd.—The writing shall further set forth that the distrained property will be brought to public sale within seven days, unless the amount of the arrear, with interest and all expenses of the distress, be previously discharged.

4th.—When a defaulter, shall be absent, a copy of the writing, with the endorsement, shall forthwith be fixed or left at his usual place of residence.

7. Wheh a defaulter on receiving notice, shall neglect to pay the amount due, or when a defaulter shall have absconded or be otherwise not forthcoming, so that the notice cannot be served upon him, the distraining officer shall transmit an inventory of the property distrained to the Collector.

8. If a defaulter whose property has been distrained shall, before the day of sale, tender payment of the arrear demanded together with interest and all expenses attending the distress, the distraining officer shall receive the amount of the arrear, interest, and expenses, and shall forthwith release the property.

9. The distress levied shall not be excessive,and the value of the property distrained shall be, as nearly as possible, proportionate to the amount of the arrear.

10. The distress shall be made after sunrise and before sunset, and not at any other time.

11. The distraining officer shall have power to force open any stable, cow-house, granary, store-house, out-house, or other building, as also to enter any dwelling-house outer door of which may be open, (excepting the apartments in which dwelling-house appropriated for the zenana or residence of women, which, by the usage of the country, are considered private), and to break open the door of any room in such dwelling-house for the purpose of attaching property liable to attachment under this Act.

12. Where a distraining officer shall have reason to suppose that the property liable to attachment under this Act is lodged within a dwelling-house, the outer door of which may be shut,or within any apartments appropriated to women, which, by the usage of the country, are considered private, such officer shall represent the same to the officer in charge of the nearest Police Station within the limits of the town of Madras: and on such representation, the officer in charge of the said station shall send a Police officer to the spot, in the presence of whom the distraining officer may force open the outer door of such dwelling-house.

13. The distraining officer may also, in the presence of the Police officer, after due notice given for the removal of women within a zenana, and after furnishing means for their removal in a suitable manner if they be woman of rank who, according to the custom of the country, cannot appear in public, enter the zenana apartments for the purpose of distraining the defaulter's property therein ;

but such property, if found, shall be immediately removed from such apartments, after which they shall be left free to the former occupants.

14. Before the Collector, or other officer empowered by the Collector in that behalf, proceeds to attach the land of a defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying the amount due, the land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be seven days from the date of service upon him. Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorized agent or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached.

15. When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into to the satisfaction of the Collector, or other officer empowered by the Collector in that behalf, he shall proceed to recover the arrear by the attachment and sale of the defaulter's land in the following manner.

16. The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land. The notice shall set forth that unless the arrear, with interest and expenses, be paid within the date therein mentioned, the land will be brought to sale in due course of law. The attachment shall be notified by public proclamation on the land, and by publication of the notice in the official Gazette of the Madras District.

17. It shall be lawful for any person claiming an interest in land which has been, or is about to be attached, to obtain its release by paying the arrears, interest and costs incurred; and all such sums, if paid by a tenant, may be deducted from any rent then or afterwards due by him to the defaulter, and, if paid by a *bona fide* mortgagee or other incumbrancer upon the estate, shall constitute a debt from the defaulter to him, and shall be a charge upon the land, but shall, in the absence of any valid engagement to the contrary, only take priority over other charges according to the date at which the payment was made.

18. In the sale of immoveable property under this Act, the following rules shall be observed:—

First.—The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Collector or other officer empowered by the Collector in that behalf.

Second.—Previous to the sale, the Collector, or other officer empowered by the Collector in that behalf, shall issue a notice thereof in English and in Tamil or Hindustani, specifying the name of the defaulter; the position and extent of the land and of the buildings thereupon; the amount of revenue assessed on the land, or upon its different sections; the proportion of the public revenue due during the remainder of the current revenue year, and the time, place and conditions of sale. This notice shall be fixed up one month at least before the sale in the Collector's office, in the nearest Police station-house, and on some conspicuous part of the land.

Third.—A sum of money equal to fifteen per cent of the price of the land shall be deposited by the purchaser in the hands of the Collector or other officer

empowered by the Collector in that behalf at the time of the purchase; and where the remainder of the purchase-money may not be paid within thirty days, the money so deposited shall be liable to forfeiture.

Fourth.—If the purchaser refuse or omit to deposit the said sum of money, or to complete the payment of the remaining purchase-money, the property shall be re-sold at the expense and hazard of such purchaser; and the amount of all loss or expense which may attend such refusal or omission, shall be recoverable from such purchaser in the same manner as arrears of public revenue. If the lands, on the second sale, sell for a higher price than at the first sale, the difference or increase shall be the property of him on whose account the said first sale was made.

Fifth.—All persons bidding at a sale may be required to state whether they are bidding on their own behalf or as agents, and in the latter case to deposit a written authority signed by their principal. If such requisition be not complied with, their bids may be rejected.

19. It shall be competent to the defaulter or to any person acting on his behalf, or claiming an interest in the land, to tender the full amount of the arrears of revenue with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching the property, or in taking the steps necessary for sale, and thereupon the sale shall be stayed, provided always, that such tender must be made before sunset on the day previous to that appointed for the sale; and all sums so paid by any tenant or *bona fide* mortgagee, or other incumbrancer, may be recovered in the manner provided in Section 17.

20. Lands purchased at public sale shall be registered in the name of the actual purchaser, who shall receive a certificate of sale signed and sealed by the Collector, which shall be conclusive evidence of the fact of the purchase in all Courts and tribunals where it may be material to establish the same; and no proof of the Collector's seal or signature shall be necessary, unless the authority before whom it is produced shall have reason to doubt its genuineness.

21. When lands may be purchased at public sale, the Collector, or other officer empowered by the Collector in that behalf, shall publish in the villages in which the land sold may be situated, in the Collector's cutcherry and in the official Gazette of the Madras District, the name of the purchaser and the date of purchase, together with a declaration of the lawful succession of such purchaser to all the rights and property of the former land-holder in the said lands.

22. If, notwithstanding such publication, any lawful purchaser of land be resisted and prevented from obtaining possession of his purchased land, any Court of competent jurisdiction, on application and production of certificate of sale provided for by Section 20, shall cause the proper process to be issued for the purpose of putting such purchaser in possession in the same manner as if the purchased lands had been decreed to the purchaser by a decision of the Court.

23. All contracts entered into by the defaulter with his tenants, and all payments to him by them, shall be binding upon the purchaser as they would have been binding upon the defaulter.

24. All lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances, except such as were *bona fide* created before the coming into operation of this Act: and if any balance shall remain after liquidating the arrears with interest, and the expenses of attachment and sale, and other costs due

in respect of such arrears, it shall be paid over to the defaulter, unless such payment be prohibited by the injunction of a Court of competent jurisdiction.

25. Arrears of rent which on the day of sale may be due to the defaulter from his under-tenants shall, in the event of the sale, be recoverable by him after the sale by any process except distraint which might have been used by him for that purpose before the said sale.

26. It shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to sell the whole or any portion of the land of a defaulter in discharge of arrears of revenue: provided always that, so far as may be practicable, no larger section in the land shall be sold than may be sufficient to discharge the arrears, with interest, and expenses of attachment and sale.

27. When a defaulter tenders security, it shall be lawful for the Collector or other officer empowered by the Collector in that behalf, to accept it and postpone the sale of the defaulter's property upon such conditions and until such time as he may appoint; in the event of default being made in the performance of such conditions, the Collector or such officer may sell the property and proceed against the defaulter, or against his security, or both.

28. Persons employed in serving notices or other process under this Act, shall be entitled to batta at such rates as may from time to time be fixed by the Board of Revenue with the sanction of Government, and published in the official Gazette of the Madras District.

29. The batta mentioned in the foregoing section, as well as interest and all costs and charges incurred under the authority of this Act, shall be recoverable from the defaulter and his securities in the same manner as arrears of revenue.

30. If property having been attached or distrained be ordered to be put for sale, and the sale be countermanded, the proprietor shall nevertheless be responsible for the expenses incurred in consequence of the attachment or distraint, in the same manner as if the sale had taken place; and in the event of such proprietor omitting to discharge the amount, it shall be recoverable by the process under which the original demand would have been recoverable.

31. Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act, except as hereinbefore provided, from applying to the Civil Courts for redress, provided that Civil Courts shall not take cognizance of any suit instituted by such parties for any such cause of action, unless such suit shall be instituted within six months from the time at which the cause of action arose.

32. No suit brought against the Collector by any person deeming himself aggrieved by anything done or purporting to be done under this Act, shall abate by reason of the departure of the Collector from the district; but the suit shall be continued against the successor of the Collector in all respects as though it had been instituted against himself. A suit may be brought against the Collector in his official capacity on account of anything done or purporting to have been done under this Act by his predecessor, subject to the limitation prescribed in the preceding section: provided that the Collector shall not be personally liable for any official act of his predecessor.

33. This Act shall be read with and taken as part of Act XII of 1851.

LANDHOLDERS' PUBLIC CHARGES AND DUTIES ACT.

ACT II OF 1853 [1].

PASSED ON THE 4th FEBRUARY 1853.

An act to remove doubts as to the liability of all subjects of Her Majesty to the same jurisdictions as Natives in respect of Public and Police duties and Public charges incident to the holders of land or their local Agents or Managers.

WHEREAS, by virtue of Act No. IV of 1837, it is lawful for any subject of Her Majesty to acquire and hold in perpetuity, or for any term of years, property in land, or in any emoluments issuing out of land, in any part, of the Territories under the Government of the *East India Company*: and whereas doubts have arisen whether all subjects of Her Majesty acquiring or holding property in land, or in any emoluments issuing out of land, or acting as local agents or managers of such property, or subject to the same jurisdictions as Natives for enforcing the discharge of public and police duties incident to the holding of such property, or for the enforcement of public charges and assessments upon or in respect thereof; and whereas it is just and reasonable that all persons who may think fit to hold such property, or to be the local agents or managers thereof, should be liable to the public burthens and duties incident thereto, and, in case of neglect or refusal to discharge the same, should be subject to the same jurisdictions as Natives; It is therefore declare and enacted as follows :—

1. No person whatever, being the owner, holder, or farmer, of any property in land, or in any emoluments issuing out of land, in any part of the said Territories, whether in perpetuity or for a term, or being a local agent or manager of any such property, is by reason of his place of birth, or by reason of his descent, exempt from any public charge or assessment, or from any duty connected with the Police, or with the salt or opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property, or as a local agent or manager thereof.

2. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws, regulations, and procedure, and to the same jurisdictions, as if he were a Native of the said Territories.

---

[1] Act II of 1853 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), sec. 3.

THE REVENUE RECOVERY SUMMONSES ACT.

ACT III OF 1869.

An Act to empower Revenue Officers to summon persons to attend at their kacharis for the settlement of matters connected with Revenue-administration.

WHEREAS it is found that the revenue-administration of the country is retarded, because Revenue-officers, namely, Collectors, Sub-Collectors, Assistant Collectors. Deputy Collectors, Tahsildars and Deputy Tahsildars, are not made competent, by express provisions of law, to issue summonses for the attendance of persons, or the production of documents, in certain cases in which it is their duty to hold investigations ; It is hereby enacted as follows :—

1. Collectors, Sub-Collectors, Assistant Collectors, Deputy Collectors and Deputy Tahsildars shall have power to summon all persons resident within the district, whose residence may appear to them to be necessary for the investigation of any matter in which they are authorised to hold an inquiry, and also to require the production of any document relevant to the matter under inquiry, which may be in the possession or under the control of such person.

2. Such summons shall be in writing, and authenticated by the signature and seal of the officer by whom it is issued.

It shall require the person summoned to appear before the said officer at a stated time and place, and shall specify whether his attendance is required for the purpose of giving evidence, or to produce a document, or for both purposes ; and any particular document, the production of which is required, shall be described in the summons with convenient certainty.

3. The summons shall be served personally on the person summoned, or, if he cannot be found, it may be left for him with some adult member of his family residing with him, or with the head of the village in which he lives.

4. Any person may be summoned to produce a document, without being summoned to give evidence ; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he sends such document to be produced, instead of attending personally to produce the same.

5. Where the person whose evidence may be required is unable, from sickness or infirmity, to attend before the officer issuing the summons, or is a person whom by reason of rank or sex it may not be proper to summon, the officer issuing the summons may, of his own motion, or on the application of the party whose evidence is desired dispense with the appearance of such person, and order him to be made by a subordinate deputed by such officer for the purpose.

LAND IMPROVEMENT LOANS ACT[1].

ACT XIX OF 1883.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

An Act to consolidate and amend the law relating to loans of money by the Government for agricultural improvements.

WHEREAS it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvements; It is hereby enacted as follows;—

1. (1) This Act may be called the Land Improvement Loans Act, 1883.

(2) It extends to the whole of British India, but shall not come into force in any part of British India until such date as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, appoint in this behalf.

2. (1) The Land Improvement Act, 1871, and Act XXI of 1876 *(An Act to amend the Land Improvement Act*, 1871), shall, except as regards the recovery of advances made before this Act comes into force and costs incurred by the Government in respect of such advances, be repealed.

(2) When in any Act, Regulation, or Notification, passed or issued before this Act comes into force, reference is made to either of those Acts, the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act.

3. In this Act, "Collector" means the Collector of land-revenue of a district, or the Deputy Commissioner, or any officer empowered by the Local Government by name or by virtue of his office to discharge the functions of a Collector under this Act.

4. (1) Subject to such rules as may be made under section ten, loans may be granted under this Act, by such officer as may, from time to time, be empowered in this behalf by the Local Government, for the purpose of making any improvement, to any person having a right to make that improvement, or with the consent of that person, to any other person.

(2) "Improvement" means any work which adds to the letting value of land, and includes the following namely:—

(*a*) the construction of wells, tanks, and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

[1] As to the effect of a sale under the Act, *see Chinnasami Mudali* v. *Tirumalai Pillai*, 25 Mad. 572.

(b) the preparation of land for irrigation ;

(c) the drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes or waste-land which is cultivable.

(d) the reclamation, clearance, enclosure, or permanent improvement of land for agricultural purposes ;

(e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto ; and

(f) such other works as the Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the local official Gazette, declare to be improvements for the purposes of this Act.

5. (1) When an application for a loan is made under this Act, the officer to whom the application is made may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice, in such manner as the Local Government may, from time to time, direct, calling upon all persons objecting to the loan to appear before him at a time and place fixed therein, and submit their objections.

(2) The officer shall consider every objection submitted under sub-section (1), and make an order in writing either admitting or overruling it :

Provided that, when the question raised by an objection is, in the opinion of the officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceedings on the application until the question has been so decided.

6. (1) Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise), within such period from the date of the actual advance of the loan, or, when the loan is advanced in instalments from the date of the advance of the last instalment actually paid as may, from time to time, be fixed by the rules made under this Act.

(2) The period fixed as aforesaid shall not ordinarily exceed thirty-five years.

(3) The Local Government and Governor-General in Council, in making and sanctioning the rules fixing the period, shall, in considering whether the period should extend to thirty-five years, or whether it should extend beyond thirty-five years, have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by the work.

7. (1) Subject to such rules as may be made under section ten, all loans granted under this Act, all interest (if any) chargeable thereon, and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely :—

(a) from the borrower—as if they were arrears of land-revenue due by him ;

(b) from his surety (if any)—as if they were arrears of land-revenue due by him ;

(c) out of the land for the benefit of which the loan has been granted —as if they were arrears of land-revenue due in respect of that land ;

(d) out of the property comprised in the collateral security (if any)— according to the procedure for the realization of land-revenue by the sale of immoveable property other than the land on which that revenue is due :

Provided that no proceeding in respect of any land under clause (c) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and where the loan is granted under section four with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest.

(2) When any sum due on account of any such loan, interest, or costs, is paid to the Collector by a surety or an owner of property comprised in any collateral security, or is recovered under sub-section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1).

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it.

8. A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

(a) that the work described is an improvement within the meaning of this Act ;

(b) that the person mentioned had, at the date of the order, a right to make such an improvement ; and

(c) that the improvement is one benefiting the land specified.

9. When a loan is made under this Act to the members of a village-community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan, and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

10. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the local official Gazette, make rules consistent with this Act to provide for the following matters namely :—

(a) the manner of making applications for loans ;

(b) the officers by whom loans may be granted ;

(c) the manner of conducting inquiries relative to applications for loans, and the powers to be exercised by officers conducting those inquiries;

(d) the nature of the security to be taken for the due application and repayment of the money, the rate of interest at which, and the conditions under which, loans may be granted, and the manner and time of granting loans;

(e) the inspection of works for which loans have been granted;

(f) the instalments by which, and the mode in which, loans, the interest to be charged on them, and the costs incurred in the making thereof, shall be paid;

(g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same; and

(h) all other matters pertaining to the working of the Act.

11. When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land revenue on the land:

Provided as follows:—

(a) Where the improvement consists of the reclamation of waste-land, or of the irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules to be framed by the Local Government with the approval of the Governor-General in Council.

(b) Nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed.

12. (1) In the Indian Registration Act, 1877, section 17, clause (*l*), for the word "certificates" the words "orders granting loans" shall be substituted.

(2) *Repealed by S. 2 of Act XII of 1891.*

(3) In the same Act, section 89, first clause,—

(a) for the words "a certificate" the words "a loan," and

(b) for the words "such certificate" the words "his order," shall be substituted.

MADRAS VILLAGE-LANDS DISPUTES REGULATION.

REGULATION XII OF 1861[1].

PASSED ON THE 13th SEPTEMBER 1816.

A Regulation for authorizing Collectors to refer claims regarding lands or crops, the validity of which claims may depend on the determination of a disputed boundary; as also certain disputes respecting the occupying, cultivating, and irrigating of land, to be tried and determined by Village and District Punchayets; and for prescribing the rules under which the trial of such disputes shall be conducted, and the decisions of the Punchayets carried into execution.

1. The mode of determining the validity of claims to disputed lands or crops prescribed in sec. 2, Reg. XXXII, 1802, being considered to be inconvenient to the parties, and the determining, in the Adawlut of the Zillah, of suits respecting the occupying, cultivating, and irrigating of land, which may arise between proprietors or renters and their ryots, in those districts where the land revenue is fixed either permanently, or for a term of years, being also regarded as liable to the same objections; and it being deemed expedient that further provision should be made for the investigation and determination of such claims, and that Collectors should for that purpose be authorized to refer them for trial and decision to village and district punchayets; the Governor in Council has passed the following rules, to be in force in the territories subject to the Presidency of Fort St. George.

2. Village and district punchayets are hereby authorized to hear and determine such suits as may be referred to them by the Collectors of Zillahs under this Regulation, through the Village and District Munsiffs.

3. Plaintiffs and defendants shall be allowed to employ a relative, a servant, or a dependent to act in their behalf in suits which may be brought before the Collectors of Zillahs under this Regulation, under the same provisions as are prescribed for suits before the District Munsiffs.

4. *First.*—In cases of claims to lands or crops in districts permanently settled or otherwise, the validity of which claims may depend on the determination of an uncertain and disputed boundary or land-mark, and also in cases of disputes

[1] This Regulation is declared to apply to the whole of the Madras Presidency except the Scheduled Districts, *Act XV of 1874*. since extended to the Bhadrachellam and Rekapalli Taluks and the Rampa country by Government of India Notifications, dated 3rd October, 1849, Nos. 1150 and 1151. So much of this Regulation as applies to cases of claims to land or crops, the validity of which claims depend upon the determination of an uncertain and disputed boundary or landmark, has been repealed by Act IV of 1897, S. 2.

respecting the occupying, cultivating and irrigating of land which may arise between the proprietors or renters and their ryots, in those districts only where the land revenue is fixed, either permanently or for a term of years, persons having such claims may prefer them in person or by vakil to the Collector of the Zillah in which the lands may be situated.

Second.—The plaint, if for land, shall contain as accurate a description as can be obtained of the land claimed, its position, boundaries, extent, and the value of its estimated annual produce, also whether it be subject to the payment of rent or revenue, or whether it be exempt from any charge on these accounts, also the time when the cause of action arose, the name and residence of the person or persons complained against, and all material circumstances which may elucidate the transaction.

Third.—If the plaint be for water, it shall, with regard to the land to be watered, state the above particulars, and in addition thereto, the custom of the village relative to the irrigation of the land in question.

5. *First.*—The Collector, on receiving a complaint preferred under the preceding section, shall issue a summons to the defendant containing a short abstract of the complaint, and shall require the defendant to appear at the Cutcherry of the Collector, in person or by vakil, on a day specified, to make answer to the complaint. The summons shall be attested by the seal of the Collector and his official signature, or that of his Assistant, and shall be served by a single peon of the Collector's establishment.

Second.—The Collector's peon shall require the defendant to affix his signature to the summons in acknowledgment of its having been duly served; and, in the event of the defendant refusing to affix his signature thereto, the peon shall call upon some of the village officers or neighbours of the defendant to witness such refusal and to attest the endorsement of it which he shall make on the summons, and shall return the same to the Collector on or before the day fixed for such return.

Third.—If a defendant against whom a summons may issue shall abscond, or is not after diligent search to be found, or shall shut himself up in his own, or in any house or building, or retire to any place, so that the process cannot be served upon him, and the peon shall return that on such account he has not been able to serve or execute the process, or if he shall refuse to acknowledge the service of the summons, on return being made in the mode prescribed in the preceding clause, the Collector shall cause a writing in the language of the district to be stuck up in some conspicuous part of his Cutcherry, containing a copy of the summons and a notice that if the party shall not appear on a day to be specified (which shall not be less than fifteen days from the time that the notice may be fixed up), the Collector will proceed without further notice to refer the cause, with the consent of the plaintiff, to be tried and determined by a punchayet of the district in which the disputed lands may be situated, without the appearance or answer of the defendant.

The Collector shall likewise order a copy of the summons and notice to be fixed up, with all practicable despatch, on the outer door of the house in which the defendant may have usually dwelt, or in some conspicuous place in the village or other place in which he may have generally resided.

The peon serving the summons shall return the order, with an endorsement stating at what times and places the summons may have been fixed up.

Fourth.—If the defendant shall appear by the time limited in the notice, the Collector shall proceed to investigate the cause of his absence, or the circumstance of his refusal to sign the summons, and, if it shall appear to the satisfaction of the Collector that the conduct of the defendant has been contemptuous, he is empowered to punish such contempt by imposing a fine on the defendant, according to the circumstances of the case, not exceeding ten Rupees : and if such fine be not immediately paid, or security given for the payment within a reasonable time, the Collector shall punish such defendant by committing him to the Zilla Jail, or by keeping him in custody in the Cutcherry or village Choultry for a period not in any case exceeding fifteen days, or until the fine shall be paid.

Fifth.—On the appearance of the defendant, if he shall appear according to the first summons, or by the time limited in the notice, the Collector shall cause the plaint to be read over to the defendant in the presence of the plaintiff, and shall demand whether he admit or deny the truth of the complaint. If the defendant shall acquiesce in the truth of the complaint, the Collector shall record such acquiescence at the foot of the plaint, and require the defendant to attest the same with his signature in the presence of witnesses, not being servants of the Collector's establishment, who shall also attest the same, and the document shall be countersigned by the Collector, who shall return the document to the complainant, together with an order to the Tahsildar or principal Native Revenue Officer of the district or Village Munsiff, to transfer the lands described in the plaint to the plaintiff, or if the plaint include crops grown on such lands, to cause the crops or the value of them, to be restored to the plaintiff by the defendant : or if the plaint be for water, to order the water to be distributed as required in the plaint ; and no other proceedings shall be necessary in the cause.

Sixth.—If the defendant shall deny the truth of the plaint, the Collector shall inquire of the parties whether they mutually consent to have the cause investigated and decided by a village punchayet ; and upon their agreeing in writing to have the matter investigated and decided by the punchayet of any particular village, the Collector shall immediately forward the petition of plaint with an order to the Munsiff of that village to assemble a punchayet without delay to investigate and determine the suit.

Seventh.—If either the plaintiff or defendant shall object to the reference of the cause to be tried and determined by a village punchayet, and either of them shall desire in writing that it may be referred to be tried and decided by a district punchayet, the Collector, whether the other party agree to such reference or not, shall forward the plaint to the Munsiff of the district in which the disputed property may be situated, with an order, to assemble a punchayet within fifteen days from the receipt of such order, to investigate and determine the suit.

Eighth.—If neither of the parties shall agree to the reference of the suit to a district punchayet, the suit shall be dismissed, and the parties shall be at liberty to seek redress from the *Zillah Court* or any competent jurisdiction.

6. *First.*—The punchayets shall be assembled according to the rules prescribed for assembling village and district punchayets, and their proceedings in cases referred under this Regulation shall be conducted according to the generel rules enacted in Regulations V and VII, 1816, for their guidance, with the following qualifications.

Second.—When only one of the parties shall appear before the District Munsiff, the punchayet shall be formed upon the challenge of such party only, and shall proceed to try the suit.

Third.—When the decree has been framed and two copies of it prepared, it shall be read in the presence of the parties, and the two copies shall be sealed up in a packet and delivered to the Munsiff, who shall forward it to the Collector sealed as he received it.

Fourth.—Decrees of the village and district punchayet in suits which may be referred to them by the Collector under this Regulation shall not be carried into execution until confirmed by the Collector, nor shall they be set aside for any other cause than gross partiality on the part of the punchayet.

7. The Collector shall detain the packet in the state in which he received it for twenty days; and, if in that time no charge of gross partiality shall be preferred by either party against the punchayet, he shall open the packet and confirm the decision by affixing his seal and signature to each of the two copies, and he shall return them to the Munsiff from whom he received them.

8. *First.*—The Munsiff, on receiving the copies the decree confirmed by the Collector, shall summon the parties and deliver to each of them a copy of the decree.

Second.—If either the plaintiff, or defendant shall fail to appear in person or by vakil to receive a copy of the decree, or having attended, shall refuse to receive a copy, the Munsiff shall cause to be endorsed on the copy intended for such party such omission or refusal, and the date. The Munsiff shall attest the same with his signature, which shall be witnessed by any two credible witnesses. The copy so endorsed shall be deposited in the records of the District Munsiff, or the Village Kurnum, as the case may be, to be delivered to the party afterwards claiming it.

9. *First.*—If either of the parties shall, within the prescribed period of twenty days, charge the punchayet with gross partiality, and if the partiality charged against the punchayet shall be established to the satisfaction of the Collector, he shall in every case, whatever the amount or value of the suit may be, submit his proceedings, with his opinion on the case, to the *Court of Appeal*, who, provided the charge be proved by such proceedings to their satisfaction, shall annul the decision, and the parties shall be at liberty to have recourse to another punchayet or to any other competent jurisdiction.

Second.—Provided, however, that where the decision of a second punchayet shall agree with the decision of a former punchayet in the same suit, it shall be final.

Third.—If the partiality charged against the punchayet shall not be proved to the satisfaction of the Collector, he shall confirm the decree as prescribed in section 7 of this Regulation, and shall levy a fine from the party making such groundless charge not exceeding one hundred Rupees.

10. Decree of village and district punchayets, in cases referred to them under this Regulation, shall be carried into execution on the written application of the party in whose favor the decree may be given, by the Collector or by the Tahsildar or principal Native Revenue Officer of the district, by causing the boundary, when the suit relates to a disputed boundary, to be marked out in the presence of the Village Munsiff and Kurnam and two or more of the principal

inhabitants, and in all other cases by causing the land to be given up or the water to be distributed as prescribed by the decree.

11. Suits instituted before the Collectors under this Regulation shall be liable only to such charges as are specified in Regulation V 1816, if decided by a village punchayet.

12. *Repealed by Madras Act No. II of 1869.*

13. A copy of this Regulation shall be lodged with, and preserved by, each Village Kurnum for the information of the Village Munsiffs.

CLAIMS TO WASTE-LANDS ACT.

ACT XXIII OF 1863.

PASSED ON THE 10th MARCH 1863.

An act to provide for the adjudication of Claims to Waste-Lands.

WHEREAS it is expedient to make special provision for the speedy adjudication of claims which may be preferred to waste-lands proposed to be sold, or otherwise dealt with, on account of Government, and of objections taken to the sale or other dispositions of such lands ; It is enacted as follows :—

1. When any claim shall be preferred to any waste-land proposed to be sold or otherwise dealt with on account of Government, or when any objection shall be taken to the sale or other disposition of such land, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of land-revenue in such district by whatever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land, which period shall not be less than three months, proceed to make an enquiry into the claim or objection.

2. The Collector or other officer as aforesaid shall call upon the claimant or objector to produce any evidence or documents upon which he may rely in proof of his claim or objection ; and, after considering the same, and making any further enquiry that may appear proper, shall dispose of the case by an order for the admission or rejection of the claim or objection, and, if the land is proposed to be sold, for the sale of the same subject to any condition or reservation which, to such Collector or other officer as aforesaid, shall appear to be proper.

If the land is ordered to be sold subject to any condition or reservation, such condition or reservation shall be notified to intending purchaser at the time of sale.

3. Pending an enquiry into any claim or objection under the last preceding section, the Collector or other officer as aforesaid shall postpone the sale or other disposition of the land ;

and, if he shall order that such claim or objection be rejected, he shall further postpone the sale or other disposition of the land, to allow the claimant or objector to contest the order of rejection in the manner hereinafter provided.

4. If the Collector or other officer as aforesaid shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land ;

but such sale or other disposition of the land may afterwards be proceeded with if, on an order issued by the Local Government to try the claim or objection, as provided in Section 6 of this Act, the claimant or objector shall fail to establish the same.

5. If the Collector or other officer as aforesaid shall order that the claim or objection be rejected, or that the land be sold subject to any condition or reservation, or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector ;

and, if such claimant or objector shall not within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid, for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid, that he intends to contest such order, the order shall be final.

If the claimant or objector shall, within the time allowed, give such notice, the Collector or other officer as aforesaid shall immediately make a report to the Board of Revenue or other superior Revenue Authority ; and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support, or otherwise, of the claim or objection ;

and such Board or other authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify or reverse the order of the Collector or other officer as aforesaid.

If the Board or other authority as aforesaid confirm the order of the Collector or other officer as aforesaid, or modify such order in such manner as to leave any part of such order in force adverse to the claimant or objector, the Collector or other officer as aforesaid shall certify such order to the Court constituted as hereinafter provided ;

and such Court shall forthwith give notice to the claimant or objector.

and if such claimant or objector shall not institute a suit in such Court to establish his claim or objection, the order of the Board or other authority aforesaid shall be final.

6. The Local Government may, within twelve months after the date on which the claim of any claimant of waste-land, or the objection of any objector as aforesaid, shall have been admitted under this Act by the Collector or other officer as aforesaid, direct a suit to be brought to try the claim or objection of the claimant or objector, in a Court constituted as hereinafter provided.

7. For the investigation and trial of claims under this Act the Local Government shall constitute, in every district in which there may be any waste-lands capable of being sold or otherwise dealt with on account of Government, a Court consisting of an uneven number of persons, not less than three, of whom the judge of the district, or the officer presiding in the principal Civil Court of original jurisdiction in the district, by whatever name his office may be designated, shall be one.

Any one or more of the members of which such Court shall consist shall have powers to make all such orders in the cases as may be necessary prior to the hearing of the suit :

Provided that, whenever the Collector or other officer by whom the original enquiry was held is the officer presiding in the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court.

8. Whenever any Court is constituted under this Act, notice thereof shall be given by written proclamation copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district;

and from the date of the issue of such proclamation no other Court shall be competent to entertain any claim or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted.

9. The Courts constituted under this Act shall be held at such place, or places, within the limits of their respective jurisdictions, as shall be considered most convenient.

10. In every suit instituted under Section 5 of this Act the claimant of the waste-land, or objector to the sale or other disposition of such land, shall appear as plaintiff; and the Collector or other officer as aforesaid shall appear as defendant on the part of Government.

Either party may appear by pleader or by agent:

Provided that, if such other officer as aforesaid be the presiding officer of the principal Civil Court of original jurisdiction in the district, the Local Government shall appoint some other officer to appear as defendant in the case on its behalf.

In any suit ordered to be instituted by the Local Government under Section 6 of this Act, the Government by any officer to be appointed for the purpose, shall appear as plaintiff; and the claimant or objector as aforesaid shall appear as defendant.

11. In suits instituted under this Act, except as hereinafter provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.

12. The Court shall fix a day for the appearance of the parties, and for the hearing of the suit, of which due notice shall be given to the parties or their agents and on the day so fixed the parties or their agents shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements.

If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit; and the Court shall issue a subpœna requiring such witness to attend the Court on that day.

It shall be competent to the Court to require the personal attendance of the claimant of the waste-land, or objector, as aforesaid, on the day fixed for the hearing, or at any subsequent stage of the suit.

13. On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the claimant of the waste-land, or the objector, or his agent (when his personal attendance is not required), and the witnesses of the parties;

and upon such examination, and after inspecting the documents of the parties, and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper.

14. No appeal shall lie from any decision or order passed under this Act, nor shall any such decision or order be open to revision.

15. If, on the trial of any suit under this Act, any question of law, or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubt, the Court may, either of its own motion or on the application of any of the parties to the suit, draw up a statement of the case, and submit it, with its own opinion, for the opinion of the High Court of Judicature, or of the highest Civil Court of appeal and revision in the territory in which the land is situate.

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of appeal, if, in any suit under this Act, any question shall arise involving any principle of general importance, or the rights of a class.

16. The Court may proceed in the case notwithstanding a reference to the High Court, or other highest Civil Court of appeal as aforesaid, and may pass an order contingent upon the opinion of the High Court, or other Court as aforesaid, on the point referred ;

but no final order for the sale or other disposition of the land in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed until the receipt of the order of the said High Court, or highest Civil Court of appeal.

17. The record of cases disposed of by Courts constituted under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

18. No claim to any land, or to compensation or damages in respect of any land, sold or otherwise dealt with on account of Government as waste-land, shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

If within three years after any lands have been delivered by the Government to the purchaser, or otherwise dealt with, any claimant or objector shall prefer a claim to the land so delivered or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate, and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid within the period limited under Section 1 of this Act, such Court shall file the claim or objection, making the claimant or objector plaintiff and the Collector of the district or other officer as aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district) the defendant in the suit ;

and the foregoing provisions of this Act shall be applicable to the trial and determination of the suit.

The report of the officer employed to give delivery, or to take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made or possession was taken.

19. In any case in which the land has been sold, if the Court shall be of opinion that the claim of the claimant is established the Court shall not award the claimant possession of the land in dispute ; but shall order him to receive from the

Government Treasury, by way of compensation, a sum equal to the price at which the land was sold, in addition to the costs of suit.

20. If the land shall have been sold subject to any condition or reservation, or shall not have been sold, but shall have been otherwise dealt with on account of the Government, and the Court shall be of opinion that the claim to such land, or the objection of an objector, is established, the Court shall award the claimant or objector to receive such sum, in respect of his interest in such land, as shall be awarded in that behalf under the provisions of the Land Acquisition Act, X of 1870:

and thereupon the Local Government shall proceed under the said Act to obtain an award of the value of such interest.

21. An award under any of the provisions of the two last preceding sections shall be in full satisfaction of the claim of the claimant or objector; and shall bar any future claim on his part, in respect to the land in suit, resting on the same cause of action, or on a cause of action which existed prior to the date of the sale or other disposition of the land on account of Government.

22. Nothing in this Act shall be held to prevent the Local Government from awarding to any claimant of waste-land sold on account of Government, on proof to the satisfaction of the Local Government of the claim of such claimant (notwithstanding that he may not have preferred his claim either to the Collector or other officer as aforesaid, or to the proper Court constituted under this Act, within the period prescribed by this Act), such amount as compensation for the said land, within the limit as to amount mentioned in Section 19 of this Act, if the land have been sold not subject to any condition or reservation, as to such Local Government may seem proper.

23. If the land have been sold subject to any condition or reservation, or have been otherwise disposed of, on account of Government, and any claim to such land, or objection to the sale or other disposition of the land, shall be proved to the satisfaction of the Local Government, although not preferred to the Collector or other officer as aforesaid, or to the Court constituted under this Act, within the period prescribed by this Act, the Local Government may award to such claimant or objector such amount as to such Local Government may appear to be the value of the interest of such claimant or objector in such land.

24. Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

MADRAS SURVEY AND BOUNDARIES ACT.

ACT IV OF 1897.

An Act to amend the Law relating to Survey of Lands and Settlement of Boundary Disputes.

WHEREAS it is expedient to consolidate and amend the law relating to survey of lands and settlement of boundary disputes ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called " The Madras Survey and Boundaries Act, 1897."

(2) It extends to the whole of the Presidency of Madras.

2. Act XXVIII of 1860 and Madras Act II of 1884 and also so much of Regulation XII of 1816 as applies to cases of claims to lands or crops, the validity of which claims may depend upon the determination of an uncertain and disputed boundary or landmark are hereby repealed.

3. In this Act, unless there is something repugnant in the subject or context, —

(i) " Estate" means—

(*a*) any permanently-settled estate, whether a Zamindari, jaghir, mitta or palaiyam ;

(*b*) any portion of such permanently-settled estate which has been separately resgistered in the office of the Collector ;

(*c*) any unsettled palaiyam or jagir ;

(*d*) any inam village of which the grant was made or has been confirmed by the British Government ;

(*e*) any portion, consisting of one or more villages of any of the estates specified above in clauses (*a*) (*b*) and (*c*), which is held on a permanent under-tenure.

(ii) " Government land" means any land not forming an estate or any portion thereof.

(iii) " Proprietor" means any person in whose name any estate is for the time being registered in the office of the district wherein the estate is situated, and in respect of an estate specified in clause (*e*) of sub-section (i), the holder thereof.

(iv) " Registered holder" means any person in whose name Government land is for the time being registered in the Collector's register :

Provided that when any person other than the registered holder is in lawful management of Government land otherwise than as agent, or servant of the regis-

tered holder, or as mortgagee or lessee, such person shall be deemed to be the registered holder in respect of such Government land.

v. Where an estate or Government land is so registered in the names of two or more persons jointly, the proprietor or registered holder, as the case may be, shall, for the purposes of this Act, be the person who is recognized by the other joint-holders as the manager of the estate or who, in case of dispute, is recognized by the Collector as senior joint-holder.

vi. "Survey" includes re-survey and demarcation.

vii. "Survey mark" means any mark or thing heretofore or hereafter made, erected or placed for the purpose of indicating survey points or lines above, on or below the surface of any land by or by order of any person duly authorized under any enactment for the time being in force to make a survey of such land or to settle the boundaries thereof.

4. (1) The Local Government may appoint any person either by name or by virtue of his office to be a Survey-officer under this Act and may dismiss, suspend or remove any person so appointed.

(2) Subject to the control of the Local Government and of any superior officer or authority appointed by it in this behalf, every person so appointed shall exercise and perform the powers and duties of a Survey-officer within such local limits as the Local Government may direct.

(3) The Local Government may delegate its powers under sub-section (1) to the Board of Revenue, and it may also delegate to the District Collector such power to be exercised by him for the purposes of section 23 only.

CHAPTER II.

THE SURVEY OF GOVERNMENT LANDS.

5. The Local Government may, by notification, direct the survey of any Government land.

The Local Government may delegate its powers under this section to the Board of Revenue.

6. (1) When the survey of any Government land has been directed under section 5, the Survey-officer shall publish a notification inviting every person claiming to be interested in such land as registered holder or otherwise to attend either in person or by agent at a specified place and time and from time to time thereafter when called upon for the purpose of pointing out boundaries and supplying information in connection therewith.

(2) A notification published under sub-section (1) shall be held to be a valid notice to every person having any interest in the land about to be surveyed.

(3) Such notification shall further require all registered holders of the land about to be surveyed—

(*a*) to clear within a specified period, by cutting down or removing any trees, jungle, fences, standing crops, or other material obstructions, the boundaries or other lines the clearance of which may be necessary for the purpose of the survey ;

(*b*) to provide labour at such times and for such periods as may from time to time be required by furnishing flag-holders and chainmen ; and

(*c*) to provide suitable survey marks and otherwise to give such assistance in the survey as may be demanded under this Act or the rules made thereunder.

7. (1) If any person fails to comply with any requisition of a Survey-officer made under clauses (*a*), (*b*) or (*c*) of sub-section (3) of section 6, the Survey-officer may employ hired labour for the purposes of the survey.

(2) The Survey-officer shall, in accordance with such rules as the Local Government may prescribe, apportion the cost of such hired labour on the lands which have been surveyed, and charge the same to the registered holders thereof.

8. If the registered holder of any land, which has been or is about to be surveyed, fails to provide suitable survey marks to the satisfaction of the Survey-officer, such officer may himself provide or make such marks and the cost of providing or making them shall be apportioned and charged as provided in sub-section (2) of section 7.

9. Notwithstanding anything contained in sub-section (3) of section 6 and in sub-section (1) of section 7, whenever it may appear to the District Collector to be desirable that the cost of all or any of the operations prescribed in clauses (*a*), (*b*) and (*c*) of sub-section (3) of section 6 shall be defrayed in the first instance by the Local Government, the Survey-officer may, in lieu of the notification prescribed in sub-section (3) of section 6, issue a notification that such cost will be defrayed in the first instance by the Local Government, and may thereupon proceed with the survey of the land and apportion and charge such cost in the manner prescribed by sub-section (2) of section 7.

10. The cost of hired labour under sub-section (1) of section 7 and of providing survey marks under section 8 shall be defrayed in the first instance by the Local Government, but any sum charged under sections 7, 8 or 9 to the registered holder shall be recoverable from the land in the same manner as an arrear of land revenue.

11. (1) If, at the time of survey, a boundary is undisputed, the Survey-officer may order that it shall be laid down as pointed out by the registered holder or his agent.

(2) If the registered holder is not present, or if the boundary is disputed, the Survey-officer shall order it to be laid down, as nearly as may be, in accordance with the village records, or as ascertained from the village officers and from such other evidence as the Survey-officer may be able to procure.

(3) The order passed by the Survey-officer in the case of any dispute under sub-section (2) shall be recorded in writing and the purport thereof communicated forthwith to the parties to the dispute, a copy of the order being furnished to them on their application and at their cost.

(4) When the survey of any village or other defined local area forming part of the land under survey has been completed in accordance with the orders passed under sub-sections (1), (2) and (3), the Survey-officer shall notify the fact as soon as practicable thereafter.

12. (1) Notice of every order passed by the Survey-officer under section 11 shall be given to all registered holders the boundaries of whose holdings may be affected by the order and an appeal from such order shall lie to the authority to whom the Survey-officer is immediately subordinate, provided that it be filed,—

(*a*) in the case of an order communicated under sub-section (3) of section 11, within three months of the date of the order ;

(*b*) in the case of any other order, within three months of the date upon which the notification prescribed by sub-section (4) of section 11 was published ; and

(*c*) where an appeal is filed, notice shall be given by the appellate authority, in the case of an appeal preferred under clause *(a)*, to the other parties to the dispute, and, in the case of an appeal preferred under clause *(b)*, to all registered holders, the boundaries of whose holdings may be affected by the proceedings in appeal.

(2) The decision of the appellate authority shall be recorded in writing and the purport thereof communicated forthwith to the parties concerned, a copy of the order being furnished to them on their application and at their cost.

(3) The order of the Survey-officer, or in the event of an appeal being filed the decision of the appellate authority, shall be final and there shall be no further appeal from such decision.

13. Any party to a boundary dispute before the Survey-officer, and any party to an appeal preferred under section 12 or to whom notice of such appeal is given, and any person claiming under any such party, deeming himself aggrieved by the order of the Survey-officer or by the decision of the appellate authority, as the case may be, may, subject to the provisions of Parts II and III of the Indian Limitation Act, 1877, institute, within the period of one year from the date of such order or decision,[1] a suit to establish the right which he claims in respect of the boundary of the property surveyed, provided that, subject to the result of such suit, if any, such order or decision shall be conclusive as between the parties to the dispute or to the appeal including those to whom notice of such appeal has been given, and those claiming under such parties or any of them.

Explanation.—Where parties litigate *bona fide* in respect of boundaries of property claimed in common for themselves and others, all persons interested in such boundary dispute shall, for the purposes of this section, be deemed to claim under parties so litigating.

14. Subject to such rules as the Local Government may prescribe in this behalf every registered holder of Government land shall be bound to maintain, renew and repair the survey-marks on or within the boundaries of his holding, and in default of his doing so within a prescribed period the Survey-officer or the Collector may at the cost of the Local Government maintain, renew and repair such survey marks, apportion the cost thereof, and recover such cost from the land as an arrear of land revenue ; provided that the Local Govern-

[1] The date of decision is the date of its communication to the parties, *The Secretary of State* v. *Narayanaswami Naidu*. 34 Mad 151 : for cases under the earlier Act, see *Annamalai* v. *Cloete*, 6 Mad. 189 ; *Seshama* v. *Sankara*, 12 Mad. 1.

ment may from time to time exempt, by a notification, any local area from the operation of the former part of this section, and cancel such notification.

15. It shall be the duty of every village headman and of every village accountant:—

(a) to prevent the destruction, injury, or alteration of any survey mark, on or within the limits of his jurisdiction ; and,

(b) when he becomes aware that any such mark has been destroyed, injured, or altered, to report the fact to his immediate official superior or the nearest Survey-officer having jurisdiction.

16. (1) Every order of a Survey-officer or of a Collector imposing charges under sections 7, 8, 9 and 14 shall be recorded in writing and an account prepared in accordance therewith communicated forthwith to the persons affected ; a copy of the order being supplied to them on their application and at their cost.

(2) An appeal against every such order shall lie to the authority to whom the officer passing it is immediately subordinate, provided that it be filed within one month of the date of such order.

(3) The order of the Survey Officer or Collector, if an appeal is not preferred, or in the event of an appeal being filed, the decision of the appellate authority, shall be final.

CHAPTER III.

THE SURVEY OF ESTATES.

17. The Local Government may, by notification, direct the survey of any estate or portion of an estate,—

(a) on the application in writing of the proprietor of such estate, accompanied by a written statement of his consent to defray the whole cost of the survey, or

(b) without such application for reasons to be recorded prior to the issue of such notification.

Provided that a survey commenced under clause *(a)* shall be stopped on the withdrawal by the proprietor of his application, unless the Local Government sees reason to direct the continuance of the survey in virtue of the powers conferred on it by clause *(b)*.

18. Except as hereinafter provided in sections 19 and 20, the conduct of such survey and the proceedings of a Survey-officer shall, as far as may be, be regulated by the procedure laid down in Chapter II with regard to the survey of Government lands; and the provisions contained in that Chapter in regard to appeals from the orders of a Survey-officer, the granting of copies thereof, and the effect of such orders and of the decision passed in appeals therefrom, shall as far as may be, apply to all orders passed by a Survey-officer under this Chapter and to the decisions passed in appeals against such orders.

19. All costs incurred by the Local Government on account of a survey conducted under this Chapter shall be recoverable from the estate, the whole or a part of which has been surveyed, in the same manner as an arrear of land revenue.

Provided that the cost of a survey directed under clause (*b*) of section 17 shall be borne by Local Government unless otherwise prescribed by any law for the time being in force.

20. (1) On the application of the proprietor of an estate under survey, the Local Government may direct the Survey-officer to apportion among the lands which have been surveyed the whole or a specified proportion of the cost of such survey : provided that the cost so apportioned shall not exceed the amount which would be chargeable to such lands under sections 7, 8 and 9 if they were Government lands.

(2) Such apportionment among the lands shall be made in accordance with such rules as the Local Government may prescribe, and shall be subject to appeal in the manner prescribed in section 16.

(3) The amount so apportioned shall be recoverable by the proprietor from the tenants concerned in the same manner as if it were an arrear of rent due by a tenant to his landlord.

21. (i) When an estate or a portion of an estate has been surveyed in pursuance of notification issued under section 17, the Survey-officer shall report the completion of the survey to the District Collector and to the proprietor, and the following consequences shall thereupon ensue :—

(ii) Subject to such rules as the Local Government may prescribe in this behalf, every tenant of the land surveyed shall be bound to maintain, renew and repair the survey-marks on or within the boundaries of his holding, and in default of his doing so within a prescribed period, the Collector may, at the cost of the Local Government, maintain, renew and repair such survey-marks and such cost shall be recoverable from the tenant in the same manner as an arrear of land revenue.

(iii) It shall be the duty of the headman and of the accountant of every village, the whole or a part of which has been surveyed—

(*a*) to prevent the destruction, injury, or alteration of any survey-mark on or within the limits of his village, and,

(*b*) when he becomes aware that any such mark has been destroyed, injured, or altered, to report the fact to the proprietor of the estate and to the Collector or to such officer subordinate to the Collector as the District Collector may from time to time direct.

CHAPTER IV.

THE SETTLEMENT OF BOUNDARY DISPUTES ARISING OTHERWISE THAN IN THE COURSE OF A SURVEY.

22. The District Collector may,—

(*a*) of his own motion, or,

(*b*) on the application of any of the disputants,

direct that any dispute, arising otherwise than in the course of a survey, as to the boundaries of any land, shall be decided under the provisions of this Act.

23. (1) Unless the Local Government or the Board of Revenue appoint a Survey-officer under section 4 for the purpose of settling such dispute, the District Collector shall thereupon—

(*a*) proceed to deal therewith himself, or,

(*b*) if empowered under sub-section (3) of section 4 appoint one of his subordinates not below the rank of Deputy Tahsildar as Survey-officer to deal therewith.

(2) An officer to whom any dispute is referred for disposal by the District Collector under sub-section (1) may either dispose of it himself or refer it for disposal to any officer subordinate to himself, not being below the rank of Deputy Tahsildar, and every officer to whom a dispute is referred for disposal as aforesaid shall be a survey-officer for the purposes of this Act.

24. (1) The District Collector or Survey-officer, as the case may be, shall, after giving due notice of the time and place at which his inquiry will be held, proceed to investigate the claims of the various parties and record the evidence of all persons examined by him.

(2) At the close of the investigation, he shall record in writing his decision and the reasons upon which it is based, and, after duly informing the parties of the same, and intimating to them the date on which he intends to demarcate according to his decision, shall proceed to mark out the requisite boundaries conformably therewith.

(3) The date on which the demarcation is completed shall be entered on the record of the case and forthwith communicated to the parties.

(4) The decision so arrived at shall be final unless reversed or modified by the decree of a Civil Court: provided that in the case of an order passed by a survey-officer below the rank of a Collector such decision shall be submitted to the District Collector or Collector by whom the dispute was referred to him for disposal under Sub-section (1) or 2, as the case may be, of section 23 and such District Collector or Collector after giving notice to the parties concerned and hearing them if they appear, shall either confirm it or pass such other order as he may deem fit[1].

25. The provisions of section 13 shall apply *mutatis mutandis* in the case of any final decision passed under the preceding section.

26. (1) In the case of any dispute settled under the provisions of this chapter, the costs of survey shall in the first instance be defrayed by the Local Government and shall then be apportioned by the District Collector or the Survey-officer, in accordance with such rules as the Local Government may prescribe, among the parties to the dispute; and the amount so apportioned to each party shall be recoverable from him as an arrear of land revenue.

(2) Appeals against orders passed under sub-section (1) shall be governed by the provisions of section 16.

27. The provisions of Chapters II or III, as the case may be, shall, so far as they relate to the maintenance, renewal and construction of survey-marks, apply to marks erected under this Chapter.

[1]. The decision of Survey officer that the lands did not belong to the proprietor is *res judicata. Muthammal* v. *The Secretary of state*, 27 M.L.J. 529.

CHAPTER V.

MISCELLANEOUS.

28. For the purposes of any survey, inquiry or other proceeding under this Act, the Survey-officer or the District Collector or any of the subordinates of such officers, shall have power to enter upon, examine and measure any land under survey.

29. Any Survey-officer generally or specially authorized in that behalf, or the District Collector, or any officer to whom an appeal is preferred under any of the provisions of this Act, may, for the purposes of any survey, inquiry or other proceeding under this Act, summon and enforce the attendance of any person for giving evidence and for the production of documents or for the purpose of rendering assistance in the survey of any land in which such person has an interest; and the procedure prescribed in the Code of Civil Procedure for summoning and enforcing the attendance of witnesses and for the recording of evidence shall be followed as far as it can be made applicable.

30. (1) The District Collector or Survey-officer may, with the consent of all the parties concerned, refer to arbitration any dispute as to a boundary.

(2) The procedure laid down in Chapter XXXVII of the Code of Civil Prooedure shall thereupon apply as far as may be.

(3) The decision of the District Collector or the Survey Officer passed in accordance with such award shall be conclusive between the parties to such arbitration and those claiming under them.

31 (i) A proprietor or registered holder of an estate, or Government land, under survey who incurs any expenses under this Act in respect of such survey, or from whom the expenses of such survey are recovered under this Act, shall, if he be not the owner thereof, acquire a charge on such estate, or Government land, to the extent of the expenses so incurred, or recovered from him, with interest thereon at the rate of nine per cent per annum, provided that, if he be a co-owner of such estate or Government land, such charge shall extend only to so much of the amount of such expenses as is payable in respect of the shares of the other co-owners in such estate or Government land.

(ii) It shall be lawful for any person who is a mortgagee, lessee, or tenant, or who is the owner, or co-owner, or in good faith believes himself to be the owner, or co-owner, of an estate or Government land under survey, to pay the charges payable under this Act in respect of the survery of such estate or Government land, though he be not the proprietor or registered holder thereof.

(iii) A mortgagee making such payment shall be entitled to add the same to the principal money due under the mortgage, at the rate of interest payable on the principal and where no such rate is fixed, at the rate of nine per cent per annum. And a lessee or tenant making such payment shall be entitled to deduct the same with interest at the rate of nine per cent per annum from the rent then due, or thereafter becoming due, in respect of such estate or Government land.

(iv) A co-owner or a person who, in good faith, deems himself to be owner or co-owner, making such payment, shall acquire a charge on such estate or Government land for the amount so paid by him with interest thereon at the rate of nine per cent per annum; provided that in the case of a co-owner such charge shall extend only to so much of the amount paid as is due in respect of the shares of the other co-owners in such estate or Government land.

32. The Local Government may make rules consistent with this Act—

(*a*) prescribing for different localities the unit of survey, the sub-divisions thereof, and the description of the survey marks; and for the maintenance, renewal and repair of such marks;

(*b*) for the collection and record of any information in respect of any land which has been or is about to be surveyed;

(*c*) prescribing and limiting the powers and duties of officers conducting proceedings under this Act and for regulating their procedure;

(*d*) for the publication of all notifications issued under this Act, and for the issue and service of all orders, communications and notices to be issued, communicated, given or served under this Act;

(*e*) for the apportionment of all charges directed to be apportioned by this Act;

(*f*) prescribing the fees payable for processes issued and copies granted under this Act; and

(*g*) enerally for carrying out the purposes of this Act;

And all such rules shall be published in the *Fort St. George Gazette* and shall thereupon have the force of law.

33. No suit or other legal proceedings shall lie againt any person for anything in good faith done or purporting to be done under this Act.

THE MADRAS COMPULSORY LABOUR ACT.

ACT I OF 1858.

[*PASSED ON THE 20TH JANUARY 1858*].

An Act to make lawful compulsory labour for the prevention of mischief by inundation and to provide for the enforcement of customary labour on certain works of irrigation in the Presidency of Fort St. George.

WHEREAS the safety of persons and property is endangered by inundations caused by sudden breaches of the embankments of tanks, rivers and canals, and of anicuts and other like works; it is necessary for the common good to make it obligatory on persons of the labouring classes, when duly called upon, to unite their labour to prevent such breaches, or to repair them instantly; and whereas it is expedient to make legal provision for the enforcement of the duty, which by local custom is incumbent on village communities, to furnish the labour required for the execution of certain works for the purpose of irrigation and drainage; It is enacted as follows:—

Whenever it shall appear to the officer in charge of any tank, river or canal or of any anicut or other like work, that there is imminent danger of such tank, river or canal being breached or of a breach being made in such anicut or other work, and of a destructive inundation being caused thereby, which may be prevented by a large body of labourers immediately working together to strengthen the embankment or other work, or when such a breach has occurred, if it shall appear to such officer that it can be repaired, and the inundation caused by it be stopped by the immediate employment of a large body of labourers for that purpose, it shall be lawful for such officer to require the head or heads of the village or villages in the vicinity to call upon all able-bodied male persons of the labouring classes in such village or villages to co-operate in the work necessary for preventing or repairing the breach, as the case may be.

In the absence of the said officer, it shall be lawful for the Tahsildar of the taluq to make such requisition in his stead.

If neither the said officer nor the Tahsildar is on the said spot, and the emergency is great and urgent, it shall be lawful for the head of the village in which the breach is expected to occur or has occurred, of his own motion, to call upon the labourers as aforesaid of his own village, and, if needful, to make a requisition to the heads of the neighbouring villages to call likewise upon the labourers of their villages, to co-operate in the work necessary for preventing or repairing the breach.

2. Any male person of the labouring classes being duly called upon by the head of his village to labour as aforesaid, who shall refuse or neglect to comply

with such call without any lawful excuse, shall, on conviction, before a Magistrate or an officer exercising the ordinary powers of a Magistrate, be punished with a fine which may extend to one hundred rupees or with simple imprisonment which may extend to one month or with both.

3. Every person who shall be employed on such work under such requisition shall be paid for his labour by day at the highest rate paid in the neighbourhood for similar work, and if he is required to work at night, at double such rate.

4. Payment shall be made to the labourers from the public treasury ; and, if the labourers shall have been employed upon a work belonging to a private person, the amount advanced from the treasury shall be recoverable from such person by the same means which may be lawfully used for the recovery of arrears of land revenue.

5. It shall be lawful for heads of villages, on the requisition of the officer in charge of such work as aforesaid, or in his absence on the requisition of the Tahsildar, or, in case of emergency, when neither such officer nor the Tahsildar is on the spot, of their own motion, to make requisitions upon the inhabitants of their villages for the supply of materials, to wit, trees and leaves, bamboos, straw and the like, necessary for stopping breaches in the embankments of tanks, rivers and canals, and to seize and, if necessary, to cut down such articles wherever thay may be found, giving receipts for them in writing ;

such supplies shall be paid from the public treasury at the highest prices for which such articles are sold in the neighbourhood ;

and in case damage is sustained by any person in consequence of the cutting down of any such articles, compensation shall be made for such damage, the amount of such compensation shall, in case of dispute, be determined in the same manner as amounts payable under section 6. When the work for which such articles are used belongs to a private person, the amount advanced from the treasury shall be recoverable from him by the same means by which arrears of land-revenue are recoverable.

6. Whenever by local custom any work for the purpose of irrigation or drainage, or connected therewith, is usually executed by the joint labour of the village community, any person bound by such custom to contribute labour to such work, who neglects or refuses without reasonable cause to comply with a requisition for such customary aid made to him by the head of the village under the orders of the Tahsildar or other superior Revenue officer, shall be liable to pay a sum equal to twice the value of labour which he is bound to contribute.

The amount so payable shall, in case of dispute, be determined summarily by a Village Punchayet assembled by order of the Collector through the village munsiff according to the rules for assembling such Punchayets prescribed in Regulations V and VII of 1816.

Such amount shall be payable on demand ; and, on non-payment, the same may be recovered by the same means by which arrears of land-revenue are recoverable[1].

All sums paid or recovered under this section shall be applicable to the expenses of any work for the purpose of irrigation or drainage executed for the benefit of the village communities to which defaulters respectively belong.

---

[1] As regards limitation for damages against Government for illegal collection, see *Ramaswami Iyer* v. *The Secretory of state*, (1915) M.W.N. 154.

THE MADRAS IRRIGATION CESS ACT.

ACT VII OF 1865.

An Act to enable the Government to levy a separate cess for the use of water supplied for irrigation purposes in certain cases.

WHEREAS, in several districts of the Madras Presidency, large expenditure out of Government funds has been, and is still being, incurred in the construction and improvement of works of irrigation and drainage, to the great adventage of the country and of proprietors and tenants of land: and whereas it is right and proper that a fit return should, in all cases alike, be made to Government on account of the increased profits derivable from lands irrigated by such works; It is enacted as follows:—

1. (*a*) Whenever water is supplied or used for purposes of irrigation from any river, stream, channel, tank, or work belonging to, or constructed by Government and also,—

(*b*) whenever water by direct or indirect flow or by percolation or drainage from any such river, stream, channel, tank or work from or through adjoining land irrigates any land under cultivation, or flows into a reservoir and is thereafter used for irrigating any land under cultivation, or flows into a reservoir and is thereafter used for irrigating any land under cultivation, and, in the opinion of the revenue officer empowered to charge water-cess subject to the control of the Collector, the Board of Revenue and the Government, such irrigation is beneficial to, and sufficient for the requirements of the crop on such land,—

It shall be lawful for the Government before the end of the revenue year succeeding that in which the irrigation takes place to levy at pleasure on the land so irrigated a separate cess for such water, and the Government may prescribe the rules under which, and the rates at which, such water-cess as aforesaid shall be levied, and alter or amend the same from time to time:

Provided that where a zemindar or inamdar or any other description of land-holder not holding under ryotwari settlement is by virtue of engagement with the Government entitled to irrigation free of separate charge, no cess under this Act shall be imposed for water supplied to the extent of this right and no more:

Provided also that no cess shall be leviable under this Act in respect of any land held under ryotwari settlement which is classified and assessed as wet, unless the same be irrigated by using without due authority water from any source hereinbefore mentioned and such source is different from or in addition to that which has been assigned by the revenue authorities or adjudged by a competent Civil Court as the source of irrigation of such land[1].

[1] Construction of the Act, see pp. 87—88; levy of water-cess in proprietary estates, 88—89; meaning of engagement, pp. 89—90.

1. A. (1) In the case of land included in an estate the cess due under this Act shall, notwithstanding anything contained in the Madras Revenue Recovery Act, 1864, be leviable in accordance with such rules as the Government may, after previous publication prescribe in that behalf—

(*a*) from the land-holder or

(*b*) from the *ryot* or

(*c*) in shares from both.

(2) The amount payable by a land-holder or a *ryot* under this Act shall be a first charge upon his interest in the land.

(3) Subject to the law of limitation of suits and to any express or implied contract between the land-holder and the *ryot*, any sum collected from a land-holder as water-cess between the 17th January 1911 and the commencement of this Act may be recovered by him from the *ryot*, who, at the date of the collection, was holding the land in respect of which the cess was collected, where such *ryot* would have been liable to pay the cess if the rules to be framed under this Act had been in force at the date of the collection.

(4) Nothing contained in this section shall affect the rights and liabilities of the land-holder and the *ryot inter se* under any contract, express or implied, in regard to the payment of water-cess.

(5) Arrears of water cess payable under this Act shall be realised in the same manner as arrears of land-revenue are or may be realised by law in the Madras Presidency[1].

(6) No action or other proceeding shall be had or taken, or be sustainable, against any officer for anything done by him previous to the passing of this Act, in, or relating to, the imposition or levying of any such water-rates heretofore imposed or levied with the sanction of the Local Government[2].

---

1 Effect of sale for arears of water-cess p. 271.

2 Jurisdiction of Civil Courts and Collector, see pp. 90—91.

THE MADRAS IRRIGATION CESS (AMENDING) ACT.

ACT V OF 1900.

An Act to amend Madras Act VII of 1865.

WHEREAS it is expedient to amend Madras Act VII of 1865; It is hereby enacted as follows:—

1. Sections 1 and 4 of the Madras Act VII of 1865, hereinafter referred to as the said Act, shall be read and construed as if at the time of the passing of the said Act, there were and had been inserted in lieu of the said sub-sections the following, *viz.*—

Vide Section 1 of Act VII of 1865, *supra*.

2. No water-cess which would not have been leviable if this Act had not been passed shall be hereafter levied for any period prior to the 1st July 1899.

3. All rules that may hereafter be prescribed by Government under section 1 of the said Act and any alterations or amendments that may hereafter be made in the rules made under that section which are now in force shall be made after previous publication.

THE MADRAS LAND ENCROACHMENT ACT.

ACT III OF 1905.

An Act to provide measures for checking unauthorised occupation of land which are the property of Government.

WHEREAS it has been the practice to check unauthorised occupation of lands which are the property of Government by the imposition of penal or prohibitory assessment or charge. and whereas doubts have arisen as to how far such practice is authorised by law and it is expedient to make statutory provision for checking such occupation ; It is hereby enacted as follows :—

1. This Act may be cited as the " Madras Land Encroachment Act, 1905." It extends to the whole of the Presidency of Madras.

2. (1) All public roads, streets, lanes, and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks, and all canals and water-courses, and all standing and flowing water, and all lands, wherever situated, save in so far as the same are the property.

(*a*) of any zemindar, poligar, mittadar, jagirdar, shrotriemdar, or inamdar or any person claiming through or holding under any of them, or

(*b*) of any person paying shist kattubadi, jodi, poruppu, or quit-rent to any of the aforesaid persons, or

(*c*) of any person holding under ryotwari tenure, including that of a Janmi in Malabar, or of a wargdar in South Canara, or in any way subject to the payment of land revenue direct to Government, or

(*d*) of any other registered holder of land in proprietary right, or

(*e*) of any other person holding land under grant from Government otherwise than by way of license,

and, as to lands, save also in so far as they are temple site or owned as house-site or backyard,

are and are hereby declared to be the property of Government except as may be otherwise provided by any law for the time being in force, subject always to all rights of way and other public rights and to the natural and easement rights of other landowners, and to all customary rights legally subsisting.[1]

(2) All public roads and streets vested in any local authority, shall, for the purposes of this Act, be deemed to be the property of Government.

[1] Whether Act retrospective, *The Secretary of State* v. *Janakiramayya*, 29 M.L.J. 389 ; *The Secretary of State* v. *The Maharaja of Bobbili*, 30 M.L.J. 163 ; Contra *Sankaran Nair J*, in *The Secretary of State* v. *Janakiramayya*, 37 Mad. 322.

Explanation.—In this section "high water mark" means the highest point reached by ordinary spring tides at any season of the year.

3. Any person who shall unauthorisedly occupy any land which is the property of Government shall be liable to pay by way of assessment:—

(i) if the land so occupied forms an assessed survey number or part thereof, the full assessment of such number for the whole period of his occupation or a part thereof proportionate to the area occupied, as the case may be, provided that, for special reasons, the Collector or subject to his control the Tahsildar or Deputy Tahsildar may impose the full assessment of such number or any lesser sum irrespective of the area occupied.

(ii) if the land so occupied be unassessed, an assessment on the area occupied calculated for the same period at the rate imposed on lands of a similar quality in the neighbourhood, or at the highest dry or wet rate of the village as the case may be, or when no such rates exist in such manner as may be prescribed in rules or orders under section 8.

Provided that payment of assessment under this section shall not confer any right of occupancy.

Explanation.—For the purposes of this section occupation for an incomplete portion of a fasli may be deemed to be occupation for a whole fasli.

4. The decision as to the rate or amount of assessment payable under section 3 shall be recorded in writing and shall not be questioned in any Civil Court.

5. Any person liable to pay assessment under section 3 shall also be liable, at the discretion of the Collector or subject to his control, the Tahsildar or Deputy Tahsildar, to pay in addition by way of penalty—

(i) if the land be assessed land, a sum not exceeding five rupees or, when ten times the assessment payable for one year under section 3 exceed five rupees, a sum not exceeding ten times such assessment, provided that no penalty shall ordinarily be imposed in respect of the unauthorised occupation of such land for any period not exceeding one year;

(ii) if the land be unassessed, a sum not exceeding ten rupees, or when twenty times the assessment payable for one year under section 3 exceeds ten rupees, a sum not exceeding twenty times such assessment.

6. (1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 may be summarily evicted by the Collector and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector and any property so forfeited shall be disposed of as the Collector may direct,

(2) An eviction under this section shall be made in the following manner, namely :—By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove

any person who may refuse to vacate the same, and if the oofficer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary enquiry into the facts of the case and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail in the district for the like period.

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under section 183, 186, 188 of the Indian Penal Code in respect of the same facts.

7. Before taking proceedings under section 5 or section 6 the Collector or Tahsildar or Deputy Tahsildar as the case may be shall cause to be served on the person reputed to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 5 or section 6.

Such notice shall be served in the manner prescribed in section 25 of the Madras Revenue Recovery Act, 1864, or in such other manner as the Local Government by rules or orders under section 8 may direct.

8. The Local Government may make rules or orders either generally or in any particular instance,—

(*a*) regulating the rates of assessment leviable under section 3;

(*b*) regulating the imposition of penalties under section 5;

(*c*) declaring that any particular land or class of lands which are the property of Government shall not be open to occupation.

(*d*) regulating the service of notices under this Act.

Such general rules or orders shall be made only after previous publication.

9. The amount of assessment and penalty imposed under this Act on any person unauthorisedly occupying any land shall be deemed to be land revenue and may be recovered from him as arrears of land revenue under the provisions of the Madras Revenue Recovery Act, 1864, or the Madras City Land Revenue (Amendment) Act, of 1867, as the case may be.

10. (1) An appeal shall lie (*a*) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and (*b*) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and (*c*) to the Board of Revenue from any decision or order of a District Collector passed otherwise than on appeal. There shall be no appeal against a decision or order passed by the Collector or the District Collector on appeal, but the District Collector may revise any decision or order passed by a Deputy Tahsildar, Tahsildar or Collector under this Act, and the Board of Revenue or the Local Government may revise any decision or order passed by any officer under this Act.

(2) Pending the disposal of any appeal or petition for revision under this Act, the Collector, the District Collector, the Board of Revenue or the Local Government, as the case may be, may suspend the execution of the order appealed against or sought to be revised.

11. No appeal shall be brought after the expiration of sixty days from the date of the decision or order complained of, provided that in computing the period of sixty days, the time required to obtain a copy of the decision or order appealed against shall be excluded, but the appeal may be admitted after the period hereby prescribed when the appellant satisfies the authority to whom he appeals that he had sufficient cause for not prefering the appeal within the prescribed period.

12. Every petition of appeal under this Act shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

13. Nothing in this Act contained shall be construed as exempting unauthorisedly occupying land from liability to be proceeded against under any law for the time being in force.

Provided that if any penalty has been levied from any person under section 5 of this Act, no similar penalty shall be levied from him under any other law in respect of such occupation.

14. Nothing contained in this Act shall be held to prevent persons deeming themselves aggrieved by any proceedings under this Act except as hereinbefore provided, from applying to the Civil Courts for redress: Provided that the Civil Courts shall not take cognizance of any suit instituted by such persons for any such cause of action unless such suit shall be instituted within six months from the time at which the cause of action arose[1].

Explanation—The cause of action shall be deemed to have arisen,

(*a*) in respect of any assessment or penalty, on the date on which such assessment or penalty was levied;

(*b*) in respect of eviction or forfeiture, on the date of eviction, or forfeiture.

15. Every proceeding taken by a Collector for the recovery of any sum of money by way of penal or prohibitory assessment or charge from any person who has unauthorisedly occupied any land hereby declared to be the property of Government shall, if such sum has been recovered prior to the passing of this Act, be deemed to have been lawfully taken, provided that this section shall not apply to any suits pending when this Act comes into force in a Court of First Instance or in a Court of Appeal or affect the validity and operation of any decree or order already passed by a court of competent jurisdiction.

16. Nothing in this Act shall apply to any lands claimed by right of escheat, resumption or reversion until such lands have been reduced into possession by Government.

[1]. A mere preliminary notice issued given by Government before exercising the powers under the Act is not a proceeding under it by which a person is aggrieved, *Narayana Pillai* v. *The Secretary of State*, 26 M.L.J. 162; a suit for a declaration of title to land by a person from whom penalty is levied is governed by the period of limitation prescribed by the Act, *Bharkaradu* v. *Subbarayudu*, 38 Mad. 674.

SCHEDULE.

Form of warrant to be issued by the Collector under section 6.

Seal.

To

THE OFFICER IN CHARGE OF THE CIVIL JAIL

AT

WHEREAS A. B. of has resisted (or obstructed) C. D. in removing E. F. (or himself, that is, the said A. B.) from certain land in the village of in the taluk and whereas it is necessary in order to prevent the continuance of such obstruction (or resistance) to commit the said A. B. to close custody. You are hereby required under the provisions of section 6 of the Madras Land Encroachment Act, 1905, to receive the said A. B. into the jail under your charge and there to keep him in safe cutody for days

Dated this day of

(Signature of Collector.)

THE MADRAS ENFRANCHISED INAMS ACT.

ACT IV OF 1862.

An Act to declare what shall be proof of the enfranchisement of inams.

WHEREAS, under the inam rules sanctioned by Government, under date the 9th August 1859, the reversionary right of Government are surrendered to the inamdars, in consideration of an equivalent annual quit-rent, and the inam lands are thus enfranchised, and placed in the same position as other descriptions of landed property, in regard to their future succession and transmission ; It is hereby enacted as follows :—

1. [*Repealed by Act XI of 1901.*]

2. The title-deed issued by the Inam Commissioner, or an authenticated extract from the register of the Commissioner, or Collector, shall be deemed sufficient proof of the enfranchisement of land previously held on inam tenure [1].

---

[1] Effect of title deed; see pp. 171-172.

THE MADRAS ENFRANCHISED INAMS ACT.

ACT IV OF 1866.

An Act to exempt enfranchised Village or other Service Inams, whether Revenue or Police, from the operation of Regulation VI of 1831.

WHEREAS in the Madras Presidency certain inams attached to hereditary village or other offices in the Revenue and Police Departments, the claim connected with which are, under the provisions of regulation VI of 1831, exclusively adjudicable by the officers of Government in the Revenue Department, have been, and may yet be, under sanction of Government, enfranchised from the condition of service and placed in the same position as other descriptions of landed property in regard to their future succession and transmission ; It is hereby enacted as follows:—

1. All hereditary village or other service inams, falling hitherto exclusively under the cognizance of the officers of Government in the Revenue Department, under the provisions of Regulation VI of 1831, which have been or shall be enfranchised from the condition of service by the Inam Commissioner, or other officer acting under the sanction of Government, shall be exempt from the operation of the aforesaid Regulation.

2. The title-deed issued by the Inam Commissioner or other officer duly authorized, or an authenticated extract from the register of the Commissioner or other officer, shall be deemed sufficient proof of the enfranchisement of the land previously held on service tenure.

3. Provided that nothing in this Act shall be construed as authorising any Court of Civil Judicature to call into question decisions affecting any service inams which may have been already passed by Revenue Officers acting under the provisions of Regulation VI of 1831, prior to the enfranchisement of such inams[1].

---

[1] Effect of title deed, see p. 172.

THE MADRAS INAMS ACT.

ACT VIII OF 1869.

An Act to prevent doubts as to the true intent and meaning of certain words used in the Title-Deeds of Inams heretofore furnished to Inam-holders by the Inam Commissioner of the Madras Presidency, and to declare the true intent and meaning of Madras Act IV of 1862 and IV of 1866.

WHEREAS, under the rules sanctioned by the Local Government in the year 1859, and published in the *Fort St. George Gazette* dated the 4th October 1859, for the adjudication and settlement of inam lands in the Madras Presidency, the Inam Commissioner of the said Presidency is required to furnish inam-holders with title-deeds in respect of their inams, prepared according to certain forms prescribed by the said Government; and whereas the terms of the title-deeds so prepared appear in many cases to convey a more extensive right than was intended to be given, or than could be legally given; and whereas it is apprehended that the terms of the title-deeds may be so construed as to affect the rights and interests which other persons may have in lands from which the inams are derived or drawn, in cases where the inam-holders do not possess the proprietary right in the soil, but only the right of receiving the rent or tax payable to Government in respect of the inam lands as transferees of the Government, and it is therefore expedient to remove all doubts as to the true intent and meaning of the words used in the said title-deeds and whereas the words "land" and "lands" are used in Madras Acts IV of 1862 and IV of 1866 in connection with inams in a sense not applicable to inams, and it is expedient to explain the true intent and meaning of such words in the said Act; It is enacted as follows:—

1. Nothing contained in any title-deed heretofore issued to any inam-holder shall be deemed to define, limit, infringe or destroy the rights of any description of holders or occupiers of the lands from which any inam is derived or drawn, or to affect the interests of any person other than the inam-holder named in the title-deed, and nothing contained in Madras Act IV of 1862, or in Madras Act IV of 1866, shall be deemed to confer or any inam-holder any right to land which he would not otherwise possess.

THE PENSIONS' ACT[1].

ACT XXIII OF 1871.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

An Act to consolidate and amend the law relating to Pensions and Grants by Government of Money or land-revenue.

WHEREAS it is expedient to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue ; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Pensions' Act 1871."

It extends to the whole of British India.

And it shall come into force on the date of the passing thereof.

2. The enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule.

But all rules in regard to the award and payment of pensions or grants of money or land-revenue, and the identification of the persons entitled to receive them, made under any such enactment, shall be deemed to have been made under this Act so far as they are consistent therewith.

3. In this Act, the expression "grant of money or land-revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite or office.

CHAPTER II.

RIGHT TO PENSIONS.

4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted [2].

5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government; and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules as the Chief Revenue Authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf.

[1] See pp. 125—131 ; Scope and object of the object, 126—127.

[2] Classes of suits to which section applies, see pp. 127—129.

6. A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly[1].

7. Nothing in sections 4 and 6 applies to—

(1) Any inam of the class referred to in section 1 of Madras Act No IV of 1862;

(2) pensions heretofore granted by Government in the territories respectively subject to the Lieutenant-Governors of Bengal and the North-Western Provinces, either wholly or in part, as an indemnity for loss sustained by the resumption by a Native Government of lands held under sanads purporting to confer a right in perpetuity. Such pensions shall not be liable to resumption on the death of the recipient, but every such pension shall be capable of alienation and descent, and may be sued for and recovered in the same manner as any other property.

CHAPTER III.

MODE OF PAYMENT.

8. All pensions or grants by Government of money or land-revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer, subject to such rules as may, from time to time, be prescribed by the Chief Controlling Revenue Authority.

9. Nothing in sections 4 and 8 shall affect the right of a grantee of land-revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land.

10. The Local Government may, with the consent of the holder, order the whole or any part of his pension or grant of money or land-revenue to be commuted for a lump sum on such terms as may seem fit.

CHAPTER IV.

MISCELLANEOUS.

11. No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,

and no money due or to become due on account of such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court[2].

12. All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section 12, in respect of any money not payable at or before the making thereof on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void.

13. Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof shall be entitled to a reward equivalent to the amount of such pension for the period of six months.

[1] Time for production of certificate, See p. 131.

[2] Meaning of pensions, See p. 130; of payable, 131.

14. The Chief Controlling Revenue Authority may, with the consent of the Local Government, from time to time make rules consistent with this Act respecting all or any of the following matters :—

(1) the place and times at which, and the persons to whom, any pension shall be paid ;

(2) inquiries into the identity of claimants ;

(3) records to be kept on the subject of pensions ;

(4) transmission of such records ;

(5) correction of such records ;

(6) delivery of certificates to pensioners ;

(7) registers of such certificates ;

(8) reference to the Civil Court, under section 6, of persons claiming a right of succession to, or participation in, pensions or grants of money or land-revenue payable by Government ;

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

SCHEDULE.

(See Section 2.)

I.—Bengal Regulations.

Number and year.	Title or Subject.	Extent of Repeal.
XXIV of 1793 ...	A Regulation for re-enacting, with modifications, the rules passed by the Governor-General in Council on the 10th June 1791, for determining the continuance or discontinuance of the pensions heretofore paid by the proprietors and farmers of land, but included in the jama or revenue payable to Government at the decennial settlement and also of the pensions heretofore paid from the sair, abolished.	The whole.
XXXIV of 1795 ...	A Regulation for re-enacting, with modifications, the rules respecting the pensions payable from the Government Mulki Treasuries in the Province of Benares.	The whole.
XXIV of 1803 ...	A Regulation for trying the validity of titles of persons receiving, or claiming a right to receive, Pensions, under the Denominations of Salianah, Rozinah, or any other Description of Grant, in the Provinces ceded by the Nawab Wazir to the Honourable the English East India Company.	The whole.
I of 1804 ...	A Regulation for the better management of the Invalid Jagirdar Establishments and of the Invalid Pension Establishments.	Sections 23 to 26 inclusive.

SCHEDULE.—*(Contd.)*
(See Section 2.)

II.—MADRAS REGULATIONS.

Number and year.	Title or Subject.	Extent of Repeal.
XXII of 1806 ...	A Regulation modifying the rules hitherto observed in the admission and payment of claims to pensions.	The whole.
II of 1811 ...	A Regulation for amending the existing rules for the support of invalid native Commissioned and Non-Commissioned Officers.	The whole.
XI of 1813 ...	A Regulation for modifying some of the Rules before established respecting the Payment of Pensions and for preventing the Abuses committed in the receipt of Pensions.	The whole.
VI of 1817 ...	A Regulation to explain the Purport and Intent of the Provision contained in Section 2, Regulation XXIV, 1803.	The whole.
I of 1803 ...	A Regulation for defining the duties of the Board of Revenue, and for determining the extent of the powers vested in the Board of Revenue.	Section 43.
II of 1803 ...	A Regulation for describing and determining the conduct to be observed by Collector in certain cases.	Section 30.
IV of 1831 ...	A Regulation for better securing to the Grantees personal or hereditary Grants of money of Land Revenue, conferred by the Government in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of Zemindaries or Paliyams forfeited or held under attachment of management by the officers of Government, or as Yaumais or Pensions.	The whole.

III.—BOMBAY REGULATION.

XXIX of 1827 ...	A Regulation for bringing under the operation of the Regulation the Bombay Territories in the Dekkan and Pensions.	Section 6, clauses 2 and 3.

IV.—ACTS.

XXXI of 1836 ...	Government Grants.	The whole.
XXIII of 1838 ...	Exemption of Grants from attachment.	The whole.
VI of 1849 ...	An Act for securing Military and Naval Pensions and Superanuation Allowances.	The whole.

THE TRANSFER OF PROPERTY ACT.

ACT IV OF 1882.

CHAPTER V.

Of Leases of Immoveable Property.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent[1].

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural of manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Provided that the Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, direct that leases of immoveable property, other than leases from year to year, or reserving a yearly rent, or any class of such leases, may be made either by unregistered instrument or by oral agreement without delivery of possession[2].

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following or such of them as are applicable to the property leased :—

(A) Rights and Liabilities of the Lessor.

(*a*) The lessor is bound to disclose to the lessee any materal defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover[3] :

(*b*) the lessor is bound on the lessee's request to put him in possession of the property[4] ;

[1] See pp. 198—228.
[2] See pp. 202—207.
[3] See pp. 209—210.
[4] See pp. 210—211.

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption[1].

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee.

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease [2];

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the optain of the lessee, be void ; [3]

Provided that, if the injury be occasioned by wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor ; [3]

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor ; [3]

(h) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth, provided he leaves the property in the state in which he received it ; [4]

(i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee, and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them ; [5]

(j) the lessee may transfer absolutely, or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease ; [5]

Nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee ;

(k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest ; [6]

[1] See pp. 211—214.
[2] See p. 214—215.
[3] See p. 216.
[4] See pp. 216—218.
[5] See p. 218.
[6] Duties of lessee, see p. 219—220.

(*l*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent, to the lessor or his agent in this behalf ;

(*m*) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good a condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property, and inspect the condition thereof, and give or leave notice of any defect in such condition ; and, when such defect has been caused by any act or default on the part of the lessee, his servants, or agents, he is bound to make it good within three months after such notice has been given or left ;

(*n*) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor ;

(*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own ; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto ;

(*p*) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes ;

(*q*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor, as to the property or part transferred so long as he is the owner of it ; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him :

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. A lease of immoveable property determines—

(*a*) by efflux of the time limited thereby :

(*b*) where such time is limited conditionally on the happening of some event —by the happening of such event :

(*c*) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event :

(*d*) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right[1] :

(*e*) by express surrender ; [2] that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :

(*f*) by implied surrender :

(*g*) by forfeiture ; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void ; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ; and in either case the lessor or his transferee does some act showing his intention to determine the lease :

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section one hundred and eleven, clause (*g*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Provided that the lessor is aware that the forfeiture has been incurred :

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver [3].

113. A notice given under section one hundred and eleven, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations.

(*a*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with

[1] See pp. 220-221.
[2] See pp. 221-222.
[3] See pp. 222-226.

interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section one hundred and fourteen.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section one hundred and six.

Illustration.

(*a*) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(*b*) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

117. None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor-General in Council, may by notification published in the local official Gazette declare all or any such provisions to be applicable, in the case of all or any of such leases together with, or subject to, those of the local law, if any, for time being in force[1].

Such notification shall not take effect until the expiry of six months from the date of its publication.

---

[1] See pp. 207-209.

MALABAR TENANTS' COMPENSATION ACT.

ACT I OF 1900.

An Act to secure to Tenants in the Malabar District Compensation for Improvements.

WHEREAS it is expedient to amend the law relating to compensation for improvements made by tenants in the Malabar District ; It is hereby enacted as follows :—

1. This Act may be called the Malabar Compensation for Tenants' Improvements Act, 1899, and it shall be applicable to the whole of the Malabar District.

2. [*Repealed by Act XI of 1901.*]

3. In this Act, unless there is something repugnant in the subject or context—

(1) "tenant," with its grammatical variations and cognate expressions, includes a person who, as lessee, sub-lessee, mortgagee, or sub-mortgagee, or in good faith believing himself to be lessee, or sub-lessee, mortgagee, or sub-mortgagee of land, is in possession thereof, or who, with the *bona fide* intention of attorning and paying the customary rent to the person entitled to cultivate or let waste-land, but without the permission of such person, brings such land under cultivation, and is in occupation thereof as cultivator [1] :

(2) " ejectment " includes redemption or recovery of possessson of land mortgaged.

(3) " improvement " means any work or product of a work whioh adds to the value of the holding, is suitable to it, and consistent with the purpose for which the holding was let mortgaged, or occupied.

4. Until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purposes of this Act :—

(*a*) the erection of dwelling-houses, buildings appurtenant thereto, and farm buildings ;

(*b*) ths construction of tanks, wells, channels, dams, and other works for the storage or supply of water for agricultural or domestic purposes ;

(*c*) the preparation of land for irrigation ;

(*d*) the conversion of one-crop into two-crop land :

(*e*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or of waste-land which is culturable ;

[1] Meaning of tenants. *Churiya Kurnum* v. *Thakaria Chiruthan*, 38 Mad. 954 (F.B.)

(*f*) the reclamation, clearance, enclosure, or permanent improvement of land for agricultural purposes;

(*g*) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto;

(*h*) the planting or protection and maintenance of fruit-trees, timber-trees, and other useful trees and plants.

5. (1) Every tenant shall, on ejectment, be entitled to compensation for improvements which have been made by him, his predecessor in interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy or the payment or tender of the mortgage-money (if any), be entitled to remain in possession until ejectment in execution of a decree or order of Court[1].

(2) A tenant so continuing in possession shall, during such continuance, hold as a tenant subject to the terms of his lease or of the mortgage, as the case may be.

6. (1) In a suit for ejectment instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under Section 5 for improvements, the Court shall ascertain, as provided in sections 9 to 18, the amount of the compensation, and shal pass a decree declaring the amount so found due, and ordering that, on payment by the plaintiff into Court of the amount so found due, and also the mortgage-money (if any), the defendant shall put the plaintiff into possession of the land with the improvements thereupon.

(2) If in such suit the Court finds any sum of money due by the defendant to the plaintiff for rent or otherwise in respect of the tenancy, the Court shall set-off such sum against the sum found due under sub-section (1), and shall pass a decree declaring as the amount payable to him on ejectment the amount (if any) remaining due to the defendant after such set-off.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree and the re-valuation of an improvement for which compensation has been so adjudged when and in so far as such re-valuation may be necessary with reference to the condition of such improvement at the time of ejectment, as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent or otherwise in respect of the tenancy, shall be determined by order of the Court executing the decree, and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of clause (*c*) of section 244 of the Code of Civil Procedure.

[1] The right of the tenant to claim improvements is not limited to his lessor only, *Churiya Kurnum* v. *Thakaria Chiruthan*, 38 Mad. 954 (F.B.); not necessary that they should be effected by the tenant himself, but sufficient if they are on the land at the time of ejectment, even though they were made by the previous occupant, *Thupian* v. *Kasim Sait*, 17 I. C. 433; *Raman* v. *Pazhiyol Mankkal Karnavan* 28 M.L.J. 184; but see *Kunchu Menon* v. *Vishnu Barathi Kal*, 28 I.C. 389.

7. Whenever a Court passes a decree or order for ejectment against a tenant, and such tenant has erected any building, constructed any work, or planted any tree which the Court finds is not an improvement for which compensation can be claimed, but which the Court finds can be removed without substantial injury to the holdiug, such tenant may remove such building, work, or tree within a time to be fixed by the Court in its decree or order.

8. The Local Government may, from time to time, by notification in the Fort St. George and Malabar District Gazettes, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under section 6 for an improvement, such number of assessors as the Local Government thinks fit, determining the qualifications of those assessors, the mode of selecting them, the fee payable to them, and the procedure to be followed in case of a difference of opinion between the Judge and one or more of such assessors.

9. (1) When the improvement is not an improvement to which section 13 applies, and has caused an increase in the value of the annual net produce of the holding, the Court shall determine, as nearly as may be, the average net money value of such increase and the number of years during which such increase may reasonably be expected to continue, and shall then ascertain the present value at 6 per cent of an annuity equal to such money value for such number of years, and also the cost of making the improvements determined in the manner prescribed in section 11.

(2) If the present value of the annuity does not exceed the cost of making the improvements, the present value shall be the compensation to be awarded.

(3) If the present value of the annuity exceeds the cost of making the improvement, the compensation to be awarded shall be the cost together with one-half of the excess.

Explanation.—The value of the net produce means the amount remaining after deducting from the value of the gross produce the cost of cultivation and the Government assessment and cesses.

10. When the improvement is not an improvement to which section 9 applies, but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy, or sown or planted by any of the persons mentioned in section 5, the compensation to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realize, if sold by public auction to be cut and carried away[1].

11. When the improvement is not an improvement to which section 9 or 10 applies, the compensation to be awarded shall be the cost of the labour, including supervision thereof, and of the materials, together wtih other expenditure, if any, which would, at the time of the valuation, be required to make the improvement, less a reasonable deduction on account of the deterioration, if any, which may have taken place from age or other cause.

[1] Paddy plants raised by the kanom mortgagee are improvements, per *Sadasiva Aiyar*, *J.* (*Spencer*, *J.* dubiante), *Narayan Nambudripad* v. *Krishna Patter*, 26 M. L. J. 348 ; but compensation cannot be claimed for a shop which was found to be inconsistent with the purpose for which the holding was let, *Raran* v. *Chekkuti*, 25 I.C. 623.

12. Notwithstanding anything contained in sections 9, 10, and 11, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

Illustrations.

(*a*) The compensation to be awarded for a jack tree as a fruit-tree is ascertained under section 9 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 10 to be Rs. 10.

(*b*) The compensation to be awarded for an immature casuarina plantation is ascertained under section 10 to be Rs. 20, but under section 11 to be Rs. 100,

In each case, the Court shall award the higher amount.

13. When the improvement consists in the protection and maintenance of timber or fruit-trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 5, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 11.

14. The Local Government may prepare, for the whole or any part of the Malabar District, tables showing the maximum and the minimum rates of compensation to be awarded under this Act for all or any class of improvements, and when such tables have been published the amount awarded as compensation under section 9, 10, 11, and 12, shall not, except where the Court is satisfied that there has been exceptional care, skill, or enterprise on the part of the tenant, exceed such maximum rates, nor shall it in any case be less than such minimum rates.

15. (1) For the purpose of determining the amount of compensation to be awarded under this Act, the Local Government may prepare tables for the whole or any part of the Malabar District showing all or any of the following matters[1] :—

(*a*) the price of cocoanuts, arecanuts, pepper, and paddy;

(*b*) the cost of—

(i) cultivating and harvesting a crop of paddy ;

(ii) planting, protecting, and maintaining a cocoanut tree, an arecanut tree, a jack tree, and a pepper vine until the tree or vine is in bearing ;

(iii) protecting and maintaining a cocoanut tree, an arecanut tree, a jack tree, and a pepper vine for one year when in bearing.

(2) The tables prepared under this section shall on publication be receivable in evidence, and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved; provided that, in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 16.

16. In respect of any product for which no table showing the price has been published, and whenever the presumption under section 15 as to price is sought

[1] Value of tables, *Ashtamoorthi Nambudri* v. *Pathuma*, 17 I. C. 134.

to be rebutted, the Court shall adopt, as the money value for the purpose of awarding compensation under section 9, the average price, as nearly as may be ascertainable, in the taluk where the land is situated, for a period of ten years, immediately preceding the institution of the suit.

17. The tables prepared under this Act shall be published in English and Malayalam in the Fort St. George and Malabar District Gazettes, and shall be kept publicly posted in the Courts having jurisdiction over the area to which the tables apply.

The Local Government may be like publication cancel or vary from time to time the tables so published.

18. When trees are planted in excess of the following scale, the Court, if satified that, in the circumstances of the particular case, the land is overplanted, may, notwithstanding anything hereinbefore contained, either refuse to grant any compensation, or may grant compensation at a lower rate for so many of the trees as are in excess of the scale and are immature :—

Cocoanut trees	120 per acre.
Arecanut trees	720 ,,
Jack trees	70 ,,

In the case of a mixed garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

19. Nothing in any contract made after the 1st day of January 1886 shall take away or limit the right of a tenant to make improvements and to claim compensation for them in accordance with the provisions of this Act :

Provided that nothing herein contained shall affect any agreement in writing registered made after the effecting of the improvements settling the amount of compensation due therefor at the date of such agreement[1].

20. Nothing in this Act shall be construed as taking away the right of any person who may be entitled by law or custom to claim compensation for any improvements other than those dealt with under the provisions of this Act.

---

[1] A contract under which the tenant agrees to accept compensation for improvements according to local custom is not a special contract which will debar the tenant from claiming compensation, *Kerala Varma Valia Rajah* v. *Ramunni*, 33 Mad. 218 ; *Sreeman Vickraman* v. *Ananda Pattar*, 34 Mad. 61.

As to the effect of contracts entered into by the tenant before the Act prescribing lesser rates, *Rander Purayil Kunhisor* v. *Neroth Kunhi Karnan*, 32 Mad. 1 (F.B), explained in *Sreeman Vickraman* v. *Ananda Patter*, 34 Mad. 61 ; *Peria Amma* v. *Moothoram*, 36 Mad. 410 ; *Kochu Rabia* v. *Abdurahman*, 38 Mad. 589 (F.B) ; *Abdulla Rowthan* v. *Raja Vasudeva Ravi Varma*, 29 M.L.J. 316.

THE MADRAS ESTATES LAND ACT.

ACT I OF 1908.

An act to declare and amend the Law relating to the Holding of Land in Estates in the Presidency of Madras.

WHEREAS it is expedient to amend and declare the law relating to the holding of land in estates in the Presidency of Madras; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Madras Estates Land Act, 1901 :[1]

it shall come into force on the first day of July 1908 :

and it shall extend to the whole of the Presidency of Madras except the Presidency Town, the district of Malabar and the portion of the Nilgiri district known as the South-East Wyanad.

2. Madras Acts VIII of 1865 and II of 1871 and section 7 of Madras Act III of 1890 are hereby repealed.

3. In this Act, unless there is something repugnant in the subject or context :—

(1) "Agriculture" with its grammatical variations and cognate expressions shall include horticulture[2].

(2) "Estate" means

(*a*) any permanently settled estate or temporarily settled zamindari ;

(*b*) any portion of such permanently settled estate or temporarily settled zamindari which is separately registered in the office of the Collector ;

(*c*) any unsettled palaiyam or jagir ;

(*d*) any village of which the land revenue alone has been granted in inam to a person not owning the kudivarm thereof, provided that the grant has been made, confirmed or recognised by the British Government, or any separated part of such village ;

(*e*) any portion consisting of one or more villages of any of the estates specified above in clauses (*a*), (*b*) and (*c*) which is held on a permanent under-tenure.

(3) "Holding" means a parcel or parcels of land held under a single puttah or engagement in a single village.

Provided that if the land-holder and ryot so agree in writing any portion of a holding as above defined shall be treated as a separate holding.

[1] Object of the Act, see p. 175.

[2] Meaning of agriculture, *Raja of Venkatagiri* v. *Jayampa Ayyapparedda*, 38 Mad 738.

(4) "Improvement" means with reference to a ryot's holding any wor which materially adds to the value of the holding, which is suitable to the holding, and consistent with the character thereof, and which, if not executed on the holding, is either executed directly for its benefit or after execution is made directly beneficial to it, and, subject to the foregoing provisions, includes—

(*a*) the construction of tanks, wells, water channels, and other work for the storage, supply, or distribution of water for agricultural purposes;

(*b*) the construction of works for the drainage of land, or for the protection of land from floods or from erosion or from other damage by water;

(*c*) the reclaiming, clearing, enclosing, levelling, or terracing of land and the preparation of land for irrigation;

(*d*) the erection of buildings on the holding or in its immediate vicinity, elsewhere than on the village-site, required for the convenient or profitable use or occupation of the holding; and the erection of dwelling houses for the ryot and his family and servants;

(*e*) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and

(*f*) the planting of fruit trees and fruit gardens;

but does not include unless made with the written consent of the land-holder, any work which prejudicially affects any other land of the land-holder.

(5) "Land-holder" means a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent Court or of any provision of law.

Where there is a dispute between two or more persons as to which of them is the land-holder for all or any of the purposes of this Act or between two or more joint land-holders as to which of them is entitled to proceed and be dealt with as such land-holder, the person who shall be deemed to be the land-holder for such purposes shall be the person whom the Collecter subject to any decree or order of a competent Civil Court may recognize or nominate as such land-holder in accordance with rules to be framed by the Local Government in this behalf.

(6) "Occupancy ryot" means ryot having a permanent right of occupancy in his holding.

(7) "Old waste" means and includes any land in an estate which not being private land,

(1) has at the time of letting by the land-holder been owned and posessed by him or his predecessors in title for a continuous period of not less than ten years and has continuously remained uncultivated during the time, such period being either after or partly before and partly after the passing of this Act, or within twenty years before the passing of this Act, or

(2) has at the time of any letting by the land-holder after the passing of this Act, remained without any occupancy rights being held therein at any time within a continuous period of not less than ten years immediately prior to such letting,

and includes ryoti land in respect of which before the passing of this Act the land-holder has obtained a final decree of a competent Civil Court establishing that the ryot has no occupancy right, and so long as no right of occupancy has been acquired subsequent to the date of such decree.

(8) "Pay", "payable" and "payment" used with reference to rent include "deliver," "deliverable" and "delivery."

(9) "Prescribed" means prescribed from time to time by the Local Government by notification in the Official Gazette.

(10) "Private land" means the domain or home-farm land of a land-holder by whatever designation known, such as kambattam, khas, sir or pannai.

(11) "Rent" means whatever is lawfully payable in money or in kind or in both to a land-holder for the use or occupation of land in his estate for the purpose of agriculture, and includes whatever is payable on account of the use and enjoyment of water supplied or taken for cultivation of land, where the charge for such water has not been consolidated with the rent payable for the land[1].

For the purposes of sections 59 to 72, 77 to 131, 143 to 148, 165. 210 and 211 and the schedule, rent includes also

(*a*) any local tax, cess, fee or sum payable by a ryot as such in addition to the rent due in respect of land according to law or usage having the force of law and also money recoverable under any enactment for the time being in force as if it was rent;

(*b*) sums payable by a ryot as such on account of pasturage fees and fishery rents;

(*c*) *Repealed by Section 2 of Act IV of 1909,*

(12) "Revenue field" means a survey field, or any field or parcel, of land, on which a definite rent is payable, or which in case of dispute may be declared by a Collector to be a revenue field.

(13) "Revenue officer" means a Collector and includes any person appointed by the Local Government whether by name or in virtue of his office to exercise any of the functions of a Revenue officer under this Act.

(14) "Revenue year" means the year ending on the 30th June.

(15) 'Ryot" means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the land-holder the rent which is legally due upon it.

(16) "Ryoti land" means cultivable land in an estate other than private land, but does not include—[2]

(*a*) tank-beds.

(*b*) threshing-floors, cattle-stands, village-sites, and other lands situated in any estate which are set apart for the common use of the villagers.

1 Meaning of rent, p. 182.

2 See pp. 175—176; Character can never be changed, pp. 178—179.

(c) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists.

(17) "Signed" includes stamped with the name of the person purporting to sign.

(18) "Tahsildar" includes a Deputy Tahsildar.

(19) "Village" means any local area situated in or constituting an estate which is designated as a village in the revenue accounts and for which the revenue accounts are separately maintained by one or more karnams or which is now recognised by the Local Government or may thereafter be declared by the Local Government for the purposes of this Act to be a village, and includes any hamlet or hamlets which may be attached thereto.

CHAPTER II.

GENERAL RIGHTS.

4. Subject to the provisions of this Act, a land-holder is entitled to collect rent in respect of all ryoti land in the occupation of a ryot.

5. (1) The rent of ryoti land together with any interest which may be due in respect thereof, shall be a first charge upon the holding and upon the produce of the holding or any part thereof, provided that, if gathered, the produce is in the custody or possession of the ryot or deposited on the holding or on a threshing floor or place for treading out grain, or the like, whether in the fields or within the homestead.

(2) Nothing in this section shall be deemed to affect any right of the Government.

6. (1) Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a land-holder to possesion of ryoti land not being old waste situated in the estate of such land-holder shall have a permanent right of occupancy in his holding but nothing contained in this sub-section shall affect any permanent right of occupancy that may have been acquired in land which was old waste before the commencement of this Act[1].

Explanation.—For the purpose of this sub-section, the expression "every ryot now in possession" shall include every person who, having held land as a ryot, continues in possession of such land at the commencement of this Act.

(2) Where land held by a ryot with a permanent right of occupancy is surrendered or abandoned or, save in the cases falling within sub-section (4) of section 8, and the exception to section 8, comes into the possession of the land-holder and the land-holder admits any person to possession of the same within the period of ten years from the date of the surrender, abandonment or coming into possession, the person so admitted shall have a permanent right of occupancy therein.

Explanation.—Every land-holder who shall have received or recovered any payment under section 45 from any person occupying ryoti land other than old waste shall be deemed to have thereby admitted such person to possession, unless within two years from the date of receipt or recovery of payment or the first of

[1] acquisition as holding in an estate, pp. 176-177 or under a land-holder, 177-178 ; by a trespasser, 183-184.

such payments if more than one he shall file a suit before the Collector for ejectment against such person.

(3) When a ryot is admitted to the occupation of old waste it shall be lawful for the land-holder to let it on such terms as may be agreed on between them ; but such admission shall not in itself confer upon the ryot so admitted a permanent right of occupancy in the land so let : Provided that this sub-section shall not affect any special rights which by law or by custom the ryots may have in the waste land of the estate.

(4) Admission to waste land under a contract for the pasturage of cattle and admission to land reserved *bona fide* by a land-holder for forest under a contract for the temporary cultivation thereof with the agricultural crops shall not by itself confer upon the person so admitted a permanent right of occupancy. or entitle him to the benefit of section 157 ; nor shall such land, by reason only of such letting and use for pasturage or temporary cultivation, be come ryots land.

(5) When a land-holder has reclaimed waste land by his own servants or hired labour he may by contract in writing prevent any person from acquiring a permanent right of occupancy in respect of the said land during a period of thirty years from the date of the first cultivation after reclamation.

(6) A person holding land as an ijaradar or farmer of the rent shall not, while so holding, acquire otherwise than by inheritance or devise a right of occupancy in any land comprised in the ijara or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming interested in the land as land-holder or by subsequently holding the land in ijara or farm.

7. Nothing in this Act shall affect any right of a land-holder to make a reservation of mining rights on admitting any person to possession of ryoti land.

8. (1) Whenever before or after the commencement of this Act the entire interests of the land-holder and the occupancy ryot in any land in the holding have become united by transfer, succession or otherwise in the same person, such person shall have no right to hold the land as a ryot but shall hold it as a land-holder ; but nothing in this sub-section shall prejudicially affect the right of any third person.

(2) Whenever before or after the commencement of this Act the occupancy right in any land shall have been transferred to a person jointly interested in the land as land-holder, he shall be entitled to hold the land subject to the payment to his co-land-holders of the shares of the rent which may from time to time be payable to them, and if such transferee lets the land to a third person, such third person shall be deemed to be an occupancy ryot in respect of the land.

(3) The merger of the occupancy right under sub-sections (1) and (2) shall not have the effect of converting ryoti land into private land.

(4) In cases where the interest of the ryot in the holding has passed to the land-holder by transfer for valuable consideration before the passing of this Act otherwise than at a sale for arrears of rent, or has passed by inheritance, the land-holder shall have the right for a period of twelve years from the passing of this Act of admitting any person to the possession of such land on such terms as may be agreed upon between them, and the person so admitted shall not be entitled during such period to the benefit of the provisions of section 46,

In cases where such interest passes to the land-holder by inheritance after the passing of this Act, the land-holder shall have the same right for a period of twelve years from the date of succession.

Exception.—Notwithstanding anything contained in this section where, before or after the commencement of this Act, the kudivaram interest in any land comprised in an estate falling within clause (*d*) of sub-section (2) of section 3 has been or is acquired by the inamdar, such land shall cease to be part of the estate [1].

9. No land-holder shall as such be entitled to eject a ryot from his holding or any part thereof otherwise than in accordance with the provisions of this Act [2].

10. (1) All rights of occupancy shall be heritable, and shall be transferable by sale, gift or otherwise [3].

(2) If a ryot dies intestate in respect of a right of occupancy and withou leaving any heirs except the Crown, his right of occupancy shall be extinguished but the land in respect of which he had such right of occupancy shall not cease to be ryoti land.

11. A ryot may use the land in his holding in any manner which does not materially impair the value of the land or render it unfit for agricultural purposes [4].

12. Subject to any rights which by custom or by contract in writing executed by the ryot before the passing of this Act are reserved to the land-holder, every occupancy ryot shall have the right to use, enjoy and cut down all trees now in his holding and in the case of trees which after the passing of this Act may be planted by the ryot or which may naturally grow upon the holding he shall have the right to use, enjoy and cut them down, notwithstanding any contract or custom to the contrary.

13. (1) Where a ryot has a permanent right of occupancy in his holding, neither the ryot nor the land-holder shall as such be entitled to prevent the other from making an improvement in respect of the holding except on the ground that he is willing to make it himself.

(2) If both the ryot and the land-holder wish to make the same improvement, the ryot shall have the prior right to make it, unless it affects the holding of another ryot under the same land-holder, in which case the land-holder shall have the prior right.

(3) Notwithstanding any usage or contract to the contrary, a ryot shall not, by reason of making an improvement at his sole expense, become liable to pay a higher rate of rent on account of any increase of production or of any change in the nature of the crop raised as a consequence of such improvement. [5]

14. A non-occupancy ryot shall be entitled in due course of husbandry to reclaim, clear, enclose, level, terrace or remove silt from his holding, and to construct, maintain and repair a well for the irrigation of the holding with all works incidental thereto, but shall not be entitled to make any other improvement in respect of his holding without the land-holder's permission.

15. If a question arises between a ryot and the land-holder, (*a*) as to the right to make an improvement, or (*b*) as to whether a particular work is or will be an improvement, the Collector may, on the application of either party, decide the question.

[1] See pp. 194—196
[2] See pp. 179—184.
[3] See p. 179.
[4] See pp. 179—180.
[5] See pp. 180—181.

16. (1) A land-holder may apply to such Revenue officer as the Local Government may appoint, to register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a ryot in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government may by rule direct.

(3) The officer receiving the application may reject it if it has not been made within twelve months from the date of the completion of the work.

17. (1) If any land-holder or ryot of a holding desire that evidence relating to any improvement made after the passing of this act in respect of a holding shall be recorded, he may apply to the Collector, who shall thereupon, at a time and place of which notice shall be given to both parties, record the evidence, unless for reasons to be recorded he considers that there are no grounds for the application.

(2) When any matter has been recorded under this section, the record shall be admissible in evidence in every subsequent proceeding between the land-holder and ryot or any persons claiming under them.

18. Notwithstanding anything contained in sections 13, 14 and 15, the ryot shall be entitled to make temporary wells, water channels, embankments, levellings, enclosures or other works or petty alterations or repairs to such works as are made in the ordinary course of cultivation, and the provisions of section 17 shall not apply to such works or repairs.

19. Except as otherwise specially provided in this Act, the relations between a ryot and his tenants, or between a land-holder and a tenant of his private land, and the rights of any other owners of land, are not regulated by the provisions of this Act.

20. Threshing floors, cattle-stands, village sites, and other lands situated in any estate which are set apart for the common use of the villagers shall not be assigned or used for any other purpose without the written order of the District Collector subject to such rules as the Local Government may make in this behalf.

Explanation.—Any land which has been so set apart by the land-holder subsequent to the permanent settlement shall revert to the land-holder when, in the opinion of the Collector, it is no longer required for any communal purposes.

Nothing in this section shall apply to tank-beds in any estate or affect the rights of the land-holder over them.

21. Any person occupying any of the lands mentioned in section 20 for any purpose other than that for which the land is so set apart or contrary to the rules framed by the Local Government may at any time within thirty years from the commencement of such occupation be summarily evicted by the Collector in the manner provided by the Madras Land Encroachment Act, 1905, and any crop, product, construction or thing raised, erected or depositedon or upon the lands shall be applied to such communal purposes as the District Collector may adjudge.

22. The provisions of sections 10 to 14 of the Madras Land Encroachment Act, 1905, shall apply, as far may be, to orders under sections 20 and 21 of this Act,

23. When in any suit or proceeding it becomes necessary to determine whether any land is old waste or ryoti land other than old waste, it shall be presumed to be ryoti land other than old waste until the contrary is proved.

CHAPTER III.

GENERAL PROVISIONS RELATING TO THE RATES OF RENT PAYABLE BY RYOTS.

24. The rent of a ryot shall not be enhanced except as provided by this Act.

25. Every ryot admitted by the land-holder after the commencement of this Act to possession of ryoti land other than old waste shall be bound to pay rent at a rate not exceeding the rate prevailing for similar lands with similar advantages in the neighbourhood, or, in case such rate cannot be ascertained, at such rate as the Collector may on application decide to be fair and equitable.

Nothing in this section precludes the land-holder from receiving any premium when the ryot is admitted into possession; but a ryot so admitted shall under no circumstances become liable to make any payment to the land-holder after his admission by way of premium or other consideration for such admission; nor shall any holding of the ryot be subjected to any charge in respect of any such premium or consideration or part thereof.

26. (1) Where for the purpose of clearing and bringing waste lands in the estate into cultivation or for the purpose of making any permanent improvement or for planting trees on the holding or where under a contract made prior to the commencement of this Act for any premium, loan or other valuable consideration, a ryot has accepted a puttah from or has entered into an engagement with his land-holder at a rate of rent lower than the lawful rate previously payable upon the land or than the rate lawfully payable upon land of similar description and with similar advantages in the neighbourhood, such rent shall not be liable to enhancement during the period for which such lower rate is payable by contract or custom, so long as the ryot shall substantially fulfil the terms upon which and the purposes for which such lower rate was allowed.

(2) After the expiry of the period for which such lower rate of rent is payable or if the terms upon which and the purposes for which such lower rate was allowed have not been substantially fulfilled, the land-holder shall be entitled to the full rate.

(3) Except as provided by sub-section (1) no rate of rent at which land may have been granted by a land-holder shall be binding upon the person entitled to the rent after the lifetime of the land-holder if such rate is lower than the lawful rate payable by the ryot before the date of the grant upon the land or upon land of similar description and with similar advantages in the neighbourhood.

27. If a question arises as to the amount of rent payable by a ryot or the conditions under which he holds in any revenue year, he shall be presumed, until the contrary is shown, to hold at the same rate and under the same conditions as in the last preceding revenue year.

28. In all proceedings under this Act the rent or rate of rent for the time being lawfully payable by a ryot shall be presumed to be fair and equitable until the contrary is proved.

29. Where for any land in his holding an occupancy ryot pays rent according to the "Waram" (that is, the established rate of the village for dividing the crop between the land-holder and the ryot) with or without an addition in money, or otherwise in kind or on the estimated value of a portion of the crop, or at rates varying with the crop or partly in one of these ways and partly in another or others, such rent shall not be liable to enhancement.

30. Where for any land in his holding a ryot pays a money rent the land-holder may institute a suit before the Collector to enhance the rent on one or more of the following grounds and no others—

(1) that during the currency of the existing rent there has been a rise in the average local prices of staple food-crops in the taluk or zamindari division :

(*a*) Provided that if the rent be permanently payable at a fixed rate or rates it shall not be liable to be enhanced under this clause on the ground of a rise in prices.

(*b*) Provided also that no enhancement under this clause shall raise the rent by more than two annas in the rupee of the rent previously payable for the land.

(2) that during the currency of the existing rent the productive powers of the land held by the ryot have been increased by an improvement effected by, or at the expense of, the land-holder :

(3) that a work of irrigation or other improvement has been executed at the expense of Government, and the land-holder has been lawfully required to pay in respect of the holding an additional revenue or rate to Government in consequence thereof ;

(4) that the productive powers of the land held by the ryot have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable where it was not previously practicable.

31. Where an enhancement is claimed under section 30, clause (*i*)—

(*a*) the Collector shall compare the average prices during the ten years immediately preceding the institution of the suit with the average prices during the ten years ending twenty years immediately before the institution of the suit ;

(*b*) if in the opinion of the Colletor it is not practicable to take the decennial periods mentioned in clause (*a*), the Collector may, in his discretion, substitute any shorter periods therefor ;

(*c*) the average prices by which the Collector shall be guided shall be those published under the authority of the Local Government, and the Collector shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct unless and until it is proved that they are incorrect ;

(*d*) the decennial periods taken for the comparison of average prices shall be periods of ten years excluding all years which the Local Government may notify to be, or to have been, famine years in respect of any local area ;

(*e*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to average prices during the previous ten years taken for purposes of comparison: Provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-half of their excess over the average prices during the earlier period.

32. (1) Where an enhancement is claimed under section 30, clause (ii)—

(*a*) the Collector shall not grant an enhancement unless the improvement has been registered in accordance with this Act or has been executed within fifteen years preceding the commencement of this Act ;

(*b*) in determining the amount of enhancement the Collector shall have regard to—

i. the increase in the productive powers of the land caused or likely to be caused by the improvement ;

ii. the cost of the improvement ;

iii. the cost of the preparation and cultivation required for utilising the improvement ; and

iv. the existing rent and the ability of the land to bear a higher rent.

(2) An enhancement decreed under this section shall, on the application of the ryot or his successor in interest, be subject to revision by the Collector in the event of the improvement not producing or ceasing to produce the estimated effect.

33. Where an enhancement is claimed under section 30, clause (iii), the rent may be enhanced by the sum or proportionate part of the sum which the land-holder has lawfully to pay to Government on account of the improvement made by them.

34. Where an enhancement is claimed under section 30, clause (iv)—

(*a*) the Collector shall not take into account any increase which is merely temporary or casual ;

(*b*) the Collector may enhance the rent to such an amount as he may deem fair and equitable but not so as to give the land-holder more than one-half of the value of the net increase in the produce of the land.

35. Notwithstanding anything contained in sections 31 to 34, the Collector shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable, or which would operate so as to raise the rent beyond the value of the established waram of the village in which the holding is situated, commuted in accordance with the provisions of section 40.

36. If the Collector passing a decree for enhancement under clauses (i), (ii) and (iv) of section 30 considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the ryot, he may direct

that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years, not exceeding five, until the limit of the enhancement decreed has been reached.

37. (1) A suit for enhancement on the ground of a rise in prices shall not be entertained, if within the twenty years next preceding its institution, the rent has whether before or after the passing of this Act been commuted or enhanced or a suit for enhancement has been dismissed on the merits.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

Reduction of Rent.

38. (1) Where for any land in his holding an occupancy ryot pays a money rent, he may institute a suit before the Collector for the reduction of his rent on one or more of the following grounds and on no others—

(*a*) that the soil of the holding has, without the fault of the ryot, become permanently deteriorated by a deposit of sand or by other specific cause, sudden or gradual; or

(*b*) that, in the case of irrigated land, there has been a permanent failure of supply from the irrigation work on which it is dependent; or

(*c*) that during the currency of the existing rent there has been a fall not due to a temporary cause in the average local prices of staple food-crops in the taluk of zamindari division.

(2) In any suit instituted under this section, the Collector may direct such reduction of the rent as he thinks fair and equitable and, in settling the amount of reduction under clause (*c*) of sub-section (1), shall have regard to the considerations specified in clauses (*a*), (*b*), (*c*) and (*d*) of section 31.

39. When in a suit instituted under section 38, sub-section (1) (*c*), a decree has been passed reducing the rent or dismissing the suit on its merits no fresh suit shall be entertained under the same sub-section if instituted within twenty years from the date of such decree, provided that nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure.

Commutation of Rent.

40. (1) Where for any land in his holding an occupancy ryot pays rent in kind or on the estimated valuer of a portion of the crop, or at rates varying with the crop, or partly in one of these ways and partly in another, or partly in one or more of these ways and partly in cash either the ryot or the land-holder may sue before the Collector to have such rent commuted to a definite money rent.

(2) In such suit the Collector shall decide whether commutation shall be allowed, and if he allows commutation shall pass a decree declaring the sum to be paid as money rent in lieu of rent in kind or otherwise and the time from which the commutation is to take effect.

(3) In making the determination, the Collector shall have due regard to each of the following considerations:—

(a) the average value of the rent actually accrued due to the land-holder during the preceding ten years other than the years which the Local Government may notify to be or to have been famine years in respect of any local area or if the value for such period cannot be ascertained, during any shorter period for which evidence may be available excluding famine years ;

(b) the money rent payable by occupancy ryots for land of a similar description and with similar advantages in the same village or neighbouring villages ; and

(c) improvements effected by the land-holder or the ryot in respect of the holding, and the rules laid down in section 32.

41. (1) Where the rent of a holding has been commuted under section 40, it shall not, except on the grounds specified in clauses (ii) and (iii) of section 30 or on the ground of a subsequent alteration of the area of the holding, be enhanced for twenty years, nor shall it be reduced for twenty years save on the ground of alteration in the area of the holding or on the ground specified in clauses (a) and (b) of sub-section (1) of section 38.

(2) The said period of twenty years shall be counted from the date on which the commutation takes effect.

Alteration of Rent with Area.

42. (1) Every ryot shall—

(a) be liable to pay additional rent for all land proved to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the holding of land which having previously belonged to the holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(b) be entitled to a reduction of rent in respect of any deficiency proved to exist in the area of his holding as compared with the area for which rent has been previously paid by him unless it is proved that the deficiency is due to the loss of land which was added to the area of the holding by alluvion or otherwise and that an addition has not been made to the rent in respect of the addition to such area.

(2) Provided that, in cases of dispute, no alteration of the amount of rent under this section shall be allowed except under the order of the Collector upon application made to him for that purpose by the land-holder or the ryot concerned.

43. Every land-holder may, by himself or by any person authorized by him in this behalf, at any time enter on and measure any land comprised in his estate, for the purposes of the last preceding section.

44. (1) Upon an application under sub-section (2) of section 42 and upon notice to the opposite party, the Collector shall, after causing such measurements to be made as he thinks fit, and after hearing such evidence as the parties may adduce, determine the area for which rent has previously been paid and the amount, if any, to be added to or deducted from the rent.

(2) In determining the area for which rent has been previously paid, the Collector shall have regard to each of the following considerations ;—

(a) the origin and conditions of the occupancy—for instance, whether the rent was a consolidated rent for the entire holding;

(b) any reason which may have led the landholder to permit the ryot to hold the additional land whether in consideration of an addition to his total rent or otherwise;

(c) any reason which may have led the ryot to consent to hold a reduced area without a corresponding reduction in his rent;

Explanation.—In determining whether the land-holder has permitted the ryot to hold the additional land, or whether the ryot has consented to hold the reduced area without a corresponding reduction in rent, the Collector may take into consideration the length of time during which the occupancy has lasted without dispute as to rent or area;

and

(d) the length of the measure used or in local use at the origin of the occupancy as compared with that used or in local use at the time of the application.

(3) In determining the amount to be added to the rent, the Collector shall have regard to the rates payable by ryots for lands of a similar description and with similar advantages in the village or neighbouring villages, and shall not in any case fix any rent which in the circumstances of the case is unfair or inequitable.

(4) When the land-holder or ryot is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

(5) In case of abatement the deduction from the rent shall be proportionate to the diminution in the total yearly produce of the holding or, in default of satisfactory proof thereof, the deduction shall be proportionate to the diminution in the area of the holding.

(6) An addition to or abatement of rent under this section shall not be deemed an enhancement or reduction of rent within the meaning of this Act.

45. A person who, without the consent of the land-holder, occupies for agricultural purposes ryoti land which he has not acquired by inheritance or legal transfer shall be liable to pay for each revenue year or portion thereof the rent fixed for that land or, if no rent has been fixed, such sum as the Collector may on application determine to be fair and equitable, together with such sum not exceeding the rent fixed or determined as the Collector may award as damages for such unauthorized occupation and the land-holder shall have against him all the remedies provided by this Act for the recovery of the rent due thereon.

Non-occupancy Ryots.

46. (1) Except in the cases falling under sub-sections (4) and (5) of section 6 and sub-section (4) of section 8, the land-holder, notwithstanding any contract to the contrary or the existence of any lease, shall, on the application of a non-occupancy ryot and on the tender by him of a sum equal to two and a half times the annual rent payable in respect of the land together with the cost of preparing any instrument required for the purpose, confer upon the ryot a permanent right of occupancy in respect of such land.

Provided that the ryot may for the purposes of any such application and tender and the land-holder may, upon any such application and tender being made to him, apply to the Collector to fix the rent of the land for the purpose of this section, and if it is proved to the satisfaction of the Collector that the rate of rent payable in respect of such land is excessive and calculated to prevent the acquisition of the occupancy right or is greater or less than the rate usually paid by occupancy ryots for similar land with similar advantages in the neighbourhood, the Collector may notwithstanding anything contained in section 26, fix in the former case a fair and equitable rent and in the latter case the rent usually paid for similar lands with similar advantages in the neighbourhood, and the rent so fixed shall for the purpose of this section be deemed to be and to have been at the date of the application and tender the rent payable by the ryot.

(2) If a land-holder to whom an application and tender have been made by a ryot fails for a period of one month to confer a permanent right of occupancy, the ryot may deposit the sum aforesaid in the Collector's office and apply to the Collector to confer on him a permanent right of occupancy in respect of that land.

(3) The Collector shall thereupon give notice of the application to the land-holder and after hearing him, if he appears, and making such inquiry as he thinks necessary, may execute any instrument required for conferring a permanent right of occupancy upon the tenant in respect of the land, and the execution shall have the same effect as an execution by the land-holder.

(4) When the occupancy right has been conferred as aforesaid, the rate at which rent is payable by the ryot for the purpose of acquiring the occupancy right as aforesaid shall be deemed to be the rate lawfully payable by him within the meaning of section 28, and shall not for a period of twenty years be liable to enhancement or reduction on the ground of a rise or fall in prices.

(5) The sums payable under this section for the acquisition of the occupancy right shall be paid to the land-holder who is the owner of the estate or part thereof and any application or proceeding under this section shall be made only to or against such land-holder.

47. When a land-holder wishes to enhance the rent payable in respect of any old waste by a ryot whose rent is not fixed by any agreement in writing or who is tenant from year to year or holds over after the expiry of the term of his lease and the ryot does not agree to the enhancement, the land-holder may cause to be served on him, through the Collector, a notice of the proposed enhancement not less than six months nor more than twelve months before the commencement of the revenue year in which the land-holder desires the enhancement to take effect.

48. (1) If, within the period of one month from the service of a notice under the last foregoing section, the ryot on whom the notice has been served presents to the Collector issuing the notice a statement in writing declaring his willingness to pay the enhanced rent, he shall be deemed to have agree to pay that rent from the commencement of the revenue year next following.

(2) If the ryot does not, within the said period of one month, present to the Collector a statement as aforesaid, the land-holder may, not less than ten weeks before the commencement of the revenue year next following, apply to the Collector to eject the ryot.

49. (1) If, when the application is made under sub-section (2) of the last foregoing section, the ryot appears and agrees to pay the enhanced rent demanded, his agreement shall thereupon be recorded and he shall not be ejected but shall be liable to pay that rent from the commencement of the revenue year next following the date of the land-holder's application under the said sub-section.

(2) If the ryot fails to appear, or if on appearing he does not agree to pay the enhanced rent demanded, the Collector shall determine what enhancement, if any, is fair and equitable for the land. Provided that in determining whether any and what enhancement shall be allowed, the Collector shall be guided by the provisions of sections 30 to 37 of this Act.

(3) If the ryot agrees to pay the rent so determined, he shall be entitled to remain in occupation of the land at that rent from the commencement of the revenue year next following the date of the land-holder's application under section 48, sub-section (2).

(4) If the ryot does not agree to pay the rent so determined under sub-section (2), the Collector may make an order for his ejectment subject to the provisions of sections 155 and 156 and subject to the deposit by the landholder, within a month from the date of the order, of the amount of compensation (if any) determined as due to the ryot under section 154. If such amount is not so deposited, the order for ejectment shall become void.

CHAPTER IV.

PUTTAHS AND MUCHALKAS.

50. (1) The provisions of this chapter shall apply to all ryots with a permanent right of occupancy and also so far as may be to ryots holding old waste under a land-holder otherwise than under a lease in writing.

(2) Every ryot shall be entitled to call upon his land-holder to grant him a puttah for any current revenue year and every land-holder shall be entitled to call upon his ryot to give him a muchalka for any current revenue year in exchange for a puttah.[1]

51. (1) The puttah shall contain the names of the parties; the local description and extent of the land; the rate or amount and nature of the rent payable thereon, according as it may be payable in money, in kind or by a share of the produce; any local tax, cess or fee or charge payable with the rent according to law or usage having the force of law; the period or periods at which such rent, local tax, cess, fee or charge is to be paid; the date of the puttah and all special terms by which it is intended thet the parties shall be bound and shall be signed by the land-holder. The muchalka may, at the option of the land-holder, be a counterpart of the puttah or a simple engagement to hold according to its terms and shall be signed by the ryot.

(2) Any stipulation in restraint of cultivation or of harvesting by a ryot or for the giving up of possession of his land by an occupancy ryot at any specified time shall be void and of no effect.

52. (1) Puttahs and muchalkas may be exchanged for periods of one or more revenue years, but no land-holder shall be bound to tender, and no ryot to accept a puttah for a period of more than one revenue year.

(2) Subject to the provisions of sub-section (3), the tender of a puttah or muchalka and the demand for a muchalka or puttah shall be made within twelve months of the commencement of the period to which the puttah or muchalka relates.

[1] As regards puttas, see pp. 186—187.

(3) Puttahs and muchalkas accepted, exchanged or decreed for any revenue year shall remain in force until the commencement of the revenue year for which fresh puttahs and muchalkas are accepted, exchanged or decreed ; provided that where a puttah or muchalka has continued in force for more revenue years than one no fresh puttah or muchalka for the same holding shall take effect until the commencement of the revenue year next succeeding that in which it is, tendered, accepted, exchanged or decreed.

53. (1) No land-holder shall have power to proceed against a ryot for the recovery of rent by distraint and sale of his moveable property or by sale of his holding under Chapter VI unless he shall have exchanged a puttah and muchalka with such ryot or tendered him such a puttah as he was bound to accept or unless a valid puttah or muchalka continues in force.

(2) A puttah tendered by a land-holder which in the opinion of the Collector is partially but not entirely correct, shall nevertheless be enforceable to the extent to which it is found to be correct.

54. (1) The tender of a puttah may be made to the ryot in the manner provided for the service of notice under sub-section (2) of section 78, or if the Collector on the application of the land-holder shall so permit, in respect of any estate or any portion of estate, by filing it in the office of the Collector or such other officer as the Local Government may by general or special order direct ; and if so filed, the Collector or such officer shall cause the puttah to be served on the ryot in the aforesaid manner at the cost of the land-holder.[1]

(2) The application shall be signed and verified as a plaint ; and shall be accompanied by such payment on account of costs of service as the Local Government may by rule prescribe.

55. When a land-holder, for three months after demand, fails to grant a puttah in such terms as the ryot is entitled to receive, it shall be lawful for the ryot to sue for such a puttah before the Collector.

56. When a ryot for one month after tender fails to accept the puttah tendered to him and to give a muchalka in exchange, the land-holder may sue before the Collector to enforce acceptance of such puttah.

57. In adjudicating suits under sections 55 and 56, the Collector shall first inquire whether the party sued is bound to grant or accept a puttah and, unless this be proved, the suit shall be dismissed. If the plaintiff establishes that the party sued is bound to grant or accept a puttah, the Collector shall inquire whether the puttah demanded or tendered is a proper one. If it is found to be so, the Collector shall pass a decree directing the defendant to grant the puttah in exchange for a muchalka or accept the puttah and give a muchalka in exchange. If the Collector is of opinion that the puttah demanded or tendered is not a proper one, he shall decide what the terms of the puttah should be, and shall embody such terms in his decree which shall be of the same force and effect as if a puttah and muchalka had been exchanged.

58. The Karnam of the village in which the holding is situated shall regularly sign and register puttahs and muchalkas in respect of the holding.

[1] Service, see p. 187.

CHAPTER V.

PAYMENT AND ARREARS OF RENT.

59 Rent shall be payable in instalments according to agreement or in the absence of agreement according to established usage[1].

60. An instalment of rent not paid on the day on which it falls due, becomes on the following day an arrear of rent.

61. An arrear shall bear simple interest at the rate of one-half per centum per mensem from the date on which the arrear fell due until it is liquidated.

62. Every ryot who makes a payment on account of rent to a land-holder shall be entitled to obtain forthwith a written receipt for the amount paid by him signed by the land-holder or by the land-holder's authorised agent.

(2) The land-holder or his agent shall prepare and retain a counterfoil of the receipt.

63. (1) The receipt shall specify such of the following particulars as can be specified by the land-holder at the time of payment, namely :—

(*a*) the names of the payer and payee ;

(*b*) the name of the village in which the holding is situated ;

(*c*) the amount paid ;

(*d*) a description of the holding on account of which the rent has been paid ;

(*e*) the year and instalment to which the payment has been credited ;

(*f*) whether the payment has been accepted as a payment in full, or only on account ; and

(*g*) the date on which the rent is paid.

Provided that the Local Government may prescribe from time to time a modified form either generally or for any particular local area or class of cases.

(2) If a receipt does not contain substantially the particulars required by this section, it may be presumed to be an acquittance in full of all arrears of rent up to the date on which the receipt was given.

64. (1) When a ryot makes a payment on account of rent, he may declare the year and the instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may at the option of the land-holder be credited on account of any arrear not barred by limitation.

65. If a land-holder, without reasonable cause, refuses to deliver to a ryot a receipt in accordance with the provisions of sections 62 and 63 for any rent paid by him or to credit the rent paid to the year and instalment to which the ryot has requested the payment to be credited, the ryot shall be entitled to recover from him by a suit before the Collector compensation not exceeding double the amount or value of the rent paid.

66. The payment shall except in cases where a ryot is allowed under this Act to deposit his rent, be made at the land-holder's village office, or at such other convenient place within five miles of the village in which the holding is situated as may be appointed in that behalf by the land-holder.

[1] Liability to pay rent, see p. 182-183.

Provided that the ryots may pay their rent to the land-holder by postal money orders under rules which the Local Government may prescribe.

Provided also that when rent is payable in kind it shall be delivered at the land-holder's granary in the village in which the holding is situated or at such other granary within ten miles of the village as may be provided in that behalf by the land-holder.

67. Where rent is due to a land-holder, the receipt for any payment on that account of the person recognised or nominated under sub-section (5) of section 3 as land-holder for the purpose of receiving rent shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by a person so recognised or nominated that the rent is due to a third person. But nothing in this section shall affect any remedy which any such third person may have against the land-holder so recognised or nominated.

Deposit of Rent.

68. (1) In any of the following cases in which rent is due and is payable in money, namely—

(*a*) when a ryot tenders money on account of rent due from him, and the land-holder refuses to receive it or refuses to grant a receipt for it ; or

(*b*) when the rent is payable to two or more persons jointly, and the ryot is unable to obtain the joint receipt of the said persons for the money, and no person has been empowered to receive the rent on their behalf ; or

(*c*) when two or more persons severally claim the right to collect the rent or when the ryot entertains a *bona fide* doubt as to who is entitled to receive the rent which has become due ;

the ryot may present to the Collector, or such other officer as the Local Government may appoint, an application in writing for permission to deposit in the office of the said Collector or other officer the full amount of rent then due.

(2) The application shall contain a statement of the grounds on which it is made ; and shall state the item or items to which the payment is to be credited and also—

in case (*a*), the name of the person to whose credit the deposit is to be entered ;

in case (*b*), the names of the persons to whom the rent is due, or of so many of them as the ryot may be able to specify : and

in case (*c*), the name of the person or persons to whom the rent was last paid and of the person or persons now claiming it.

(3) The application shall be signed and verified as a plaint ; and shall be accompanied by such payment on account of costs as the Local Government may by rule prescribe.

69. (1) If it appears to the Collector, or other officer to whom an application is made under the last foregoing section, that the applicant is entitled under that section to deposit the rent, he shall receive the amount and shall give a receipt for it.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in case (*a*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*b*) of that section, by the persons to whom the rent is due; and

in case (*c*) of that section, by the person entitled to receive the rent.

70. (1) The Collector or other officer receiving the deposit shall forthwith cause to the affixed in a conspicuous place at his office and in the vernacular language of the district, a notification of the receipt of such deposit containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Collector or other officer shall forthwith—

in case (*a*) of section 68, cause a notice of the receipt of the deposit to be served on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*b*) of that section, cause a notice of the receipt of the deposit to be posted at the land-holder's village office or residence and in some conspicuous place in the village in which the holding is situated; and

in case (*c*) of that section, cause a like notice to be served on every person who, the Collector or other officer has reason to believe, claims or is entitled to the deposit.

71. (1) The Collector or other officer may pay the amount of the deposit to any person appearing to him to be entitled to the same, ormay, if he thinks fit and shall, if deposit has been made under clause (*c*) of sub-section (1) of section 68, and there has been no joint application for payment by the disputing parties, retain the amount pending the decision of the Civil Court as to the person so entitled.

(2) The payment less the money-order commission may be made by postal money-order under such rules as Local Government may prescribe.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a competent Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Collector or other officer with whom the rent was deposited or on his producing such other evidence of his having made the deposit as the Collector may consider sufficient.

Nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same by suit in a Civil Court from a person to whom it has been paid under this section.

72. No suit or other proceeding shall be instituted against the Secretary of State for India in Council or against any officer of the Government, in respect of anything done by a Collector or other officer regarding a deposit under sections 68 to 71.

Appraisement and Division of Produce.

73. (1) Where rent is taken by appraisement of the standing crop the ryot shall be entitled to the exclusive possession of the crop.

(2) Where rent is taken by division of the produce, the ryot shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case, the ryot shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the land-holder. But before commencing to cut or gather the crop the ryot shall give reasonable intimation to the land-holder or his authorised agent of his intention to do so.

(4) If the ryot cuts or removes any portion of the crop or the produce at such a time or in such a manner as to prevent the due appraisement or division thereof, the produce may be deemed to have been as full as the fullest crop of the same description in the neighbourhood on similar land for that harvest.

74. Where rent is taken by appraisement of the crop or division of the produce—

(*a*) if either the land-holder or the ryot fails to attend either personally or by agent, at the proper time or making the appraisement or the division ; or,

(*b*) if there is a dispute as to the quantity and value of the crops or as to what is a full crop under sub-section (4) of section 73, or as to the division of the produce,

An application may be presented by either party to the Collector requesting that an officer be deputed to make the division or appraisement or determination.

With the application the applicant shall deposit such fee as may be prescribed by the Local Government in rules made in this behalf.

75. (1) On receiving such application, the Collector shall issue a notice in writing to the opposite party to attend on the date and at the time and place specified in the notice, and shall depute an officer by whom such division, or appraisement or determination shall be made.

(2) If the opposite party objects that the rent is not taken by division, or appraisement, or that no rent is payable, the officer deputed shall record the objection, but shall proceed as hereinafter provided.

(3) If, on or before the date appointed, the dispute has not been adjusted, he shall call on each of the parties to appoint within a time specified a resident of the neighbourhood as an assessor to assist in the division of the produce, or appraisement or determination of the crop.

(4) If either party fails to attend or to appoint an assessor the officer deputed shall nominate an assessor on his behalf.

(5) The officer deputed shall record, and in making his award shall have regard to the opinions of the assessors but shall not be bound thereby.

(6) In the case of a division of the produce, if the parties agree to the award, the division shall be made accordingly. If the parties do not agree to such division, and in all cases in which the rent is payable by appraisement of the standing crop, or where the value of a full crop has to be determined, the officer deputed shall

make an estimate of the produce or crop and determine the rent payable. He shall then deliver his award after notice to the parties and submit it with a report of his proceedings to the Collector.

(7) Except where the assessors agree with the Revenue officer in which case the award shall be final, the parties shall be at liberty to file objections to the award within one week after the day on which the award was delivered ; and the Collector shall hear such objections, and pass orders thereon, after such further inquiry (if any) as may appear to be necessary.

If an objection is filed that the rent is not payable by division, or appraisement, or that no rent is payable, and Collector upholds the objection, he shall set aside the award.

If any other objection is filed or if no objection is filed, the Collector may confirm the award or may, after giving an opportunity to the parties to be heard, modify the award as he thinks fit, and shall pass an order for the payment of the rent and costs (if any) and such order shall be final and have the effect of a decree for arrears of rent.

(8) In any proceedings under this section the Collector may by order prohibit the removal of the produce until appraisement or division has been effected.

76. For the purpose of making the division and appraisement, the officer deputed, with his assessors, may enter upon any land on which or into any building in which the produce is.

CHAPTER VI.

Recovery of Rent By Suit Or By Distraint And Sale of Moveable Property or of the Holding.

77. At any time after an arrear of rent has become due—

(1) the land-holder may institute a suit before the Collector for the recovery of the arrear, and

(2) the land-holder may, in addition to any other remedy to which he is entitled by this Act, in respect of any arrear of rent which has accrued due within the next preceding twelve months, distrain upon his own responsibility the moveable property of the defaulting ryot or the growing crops, or the produce of the land or trees in the defaulter's holding.

Provided that the following articles shall not be distrained for arrears :—

(*a*) the necessary wearing apparel, cooking vessels, beds and bedding of the defaulter his wife and children, and such personal ornaments as in accordance with religious usage cannot be parted with by a woman ;

(*b*) his plough and implements of husbandry, ploughing cattle and manure stocked by the ryot or cultivator and such seed-grain as may be necessary for the due cultivation of the holding in the ensuing year.

78. (1) Before or at the time when a distraint is made the distrainer, who may be either the land-holder or his duly authorised agent, shall serve on the defaulter a written demand specifying the amount of the arrear, together with an account exhibiting the grounds on which the demand is made[1].

(2) The demand and account shall be dated and signed by the distrainer and shall within one year from the date on which the arrear became due be served upon the defaulter by delivering a copy to him or to some adult male member of his family at his usual place of abode provided that it is in the neighbourhood of the land to which the distress refers, or to his authorized agent, or, when such service cannot be effected, by affixing a copy of the notice on some conspicuous part of the land to which it refers[2]. The demand shall set forth.—

(*a*) the amount of the arrear due, with interest, if any ;

(*b*) the holding in respect of which it is due ;

(*c*) the period in respect of which it is due.

79. (1) Unless the demand is immediately satisfied the distrainer may distrain property to the amount of the arrear and the costs of the distress and shall forthwith prepare a list or description of the said property, date and sign the same, and without delay serve it on the defaulter in the manner provided in the preceding section for the service of a written demand, and a copy of such list or description, together with a copy of the written demand and account, shall be sent by the distrainer within ten days of the service of the demand on the defaulter to the public officer hereinafter called the sale officer empowered under Madras Act VII of 1839 to sell property distrained for arrears.

(2) If the distrainer has notice that the cultivator is some person other than the defaulter, a copy of the demand and of the list or description of the property shall in like manner be served on or delivered to the cultivator.

80. A person authorized to distrain may apply to the nearest police station for such assistance as may be necessary to prevent any breach of the peace, and the authority to whom such application is made shall depute one or more police officers to be present at the time of such distress for such purposes.

81. The distress shall not be excessive; that is to say, the value of the property distrained shall be as nearly as possible equal to the amount of the arrears due and costs of distress.

82. Distress shall be made after sunrise and before sunset and not otherwise.

83. (1) Standing crops and other ungathered produce may, notwithstanding the distraint, be tended, and after notice to the distrainer be reaped, and gathered by the owner of the crop.

(2) If the owner of the crop neglects to tend, reap or gather the said crop or produce, the distrainer may do so at the expense of the owner.

(3) The distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose ; the person so appointed shall store the same in some convenient place in the neighbourhood at the expense of the owner.

84. It shall be lawful for the distrainer to force open any stable, cow-house, granary, godown, out-house or other building, and he may also enter any dwelling-house, the outer door of which may be open and may break open the door of any

[1] *See* pp. 273-276. [2] for service, *See* p. 187.

room in such dwelling-house for the purpose of distraining property belonging to a defaulter and kept therein ; provided always that it shall not be lawful for such, distrainer to break open or enter any apartment in such dwelling house appropriated for the zenana or residence of women, except as hereinafter provided.

85. When a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling house, the outer door of which may be shut or within any apartments appropriated to women, which, by the usage of the country, are considered private, such distrainer shall report the fact to the officer in charge of the nearest police station. Thereupon the officer in charge of the station shall send a police officer to the spot in the presence of whom the distrainer may break open the outer door of such dwelling-house, and also the door of any room within the house except the zenana. The distrainer may also, in the presence of the police officer, after due notice given for the removal of women within the zenana, and after furnishing means for their removal in a suitable manner (if they be women of rank, who, according to the custom of the country, cannot appear in public) enter the zenana apartments for the purpose of distraining the defaulter's property, if any, kept therein. If any such property be found, it shall immediately be removed from such apartments in order that they may be left free for the return of the former occupants.

86. The distrainer shall not work the bullocks or cattle or make use of the property distrained. He shall provide necessary food for cattle or other livestock, and the cost thereof shall be a charge against the defaulting ryot and shall be recoverable as a cost of the distress.

87. (1) After a distress has been made under this chapter and at any time before the date appointed for sale, the defaulter, the cultivator or the owner of the property may tender or pay the amount specified in the written demand under section 78 with subsequent interest and costs to the distrainer, or may furnish security to the satisfaction of the distrainer, whereupon the distrainer shall give a written acknowledgment of the tender, payment or security, and shall withdraw the distress forthwith.

(2) If at any time before the sale of the distrained property, the defaulter or cultivator or owner of the property distrained pays, to the sale officer, the amount specified in the written demand under section 78 with subsequent interest and costs the sale officer shall grant a receipt for the same and shall withdraw the distress forthwith.

88. When property distrained may be stolen, lost, damaged or destroyed while in the keeping of the distrainer, by reason of his not having taken reasonable precautions for its preservation, the owner may sue the distrainer for damages before the Collector.

89. A third person claiming a right or interest in any of the moveable property under distraint may before the date of sale make an application to the Collector or sale officer and the Collector shall thereupon hold or cause to be held an immediate enquiry, and if he sees sufficient cause for doing so, may postpone the sale of such property. The Collector shall pass such order upon the claim as he shall deem fit.

90. When after an application made by the distrainer it is proved to the satisfaction of the Collector that,

(1) a defaulter has made a fraudulent conveyance of of moveable property to prevent distress for arrears,

(2) any person has forcibly or clandestinely taken away moveable property once distrained,

The Collector shall pass an order directing that the property be restored or that its value be paid to the distrainer.

91. Any person aggrieved by an order under section 89 or section 90 directing any property to be delivered up or restored or its value to be paid to the distrainer may institute a suit before the Civil Court against the distrainer for compensation.

92. (1) The distrainer shall within fifteen days from the date of the distraint apply to the sale officer for the sale of the property specified in the list or description mentioned in section 59.

(2) If no such application is made the distraint on the property shall cease to be in force at the expiration of the said period of fifteen days.

93. The application shall be in writing and shall specify the following particulars, namely—

(*a*) the name and residence of the defaulter and in the case provided for in sub-section (2) of section 79, of the cultivator also;

(*b*) the amount due;

(*c*) the date of the distraint; and

(*d*) the place in which the distrained property is.

94. Together with the application the distrainer shall deliver to the sale officer the fee prescribed for the service of notice.

95. (1) Immediately on receipt of such application, and fee the sale officer shall send a copy of the application and of the list or description mentioned in section 79 to the Collector and shall serve a notice on the defaulter requiring him either to pay the amount demanded, or to institute a suit before the Collector to contest the distraint within fifteen days from the date of the service of the notice.

(2) In the case provided for in sub-section (2) of section 79 similar notice shall be served on the cultivator.

(3) The sale officer shall by order fix a date for the sale which shall not be less than fifteen days from the date of service of the notice under sub-section (1) or sub-section (2), as the case may be, and shall cause it to be proclaimed by beat of drum in the village where the distrained property is; he shall also post a copy of his order in some conspicuous place in the village.

In fixing the date of sale, not less than seven days shall be allowed from the date of the aforesaid proclamation.

(4) The notice and proclamation shall specify—

(*a*) the property to be sold;

(*b*) the amount mentioned in the application under section 93; and

(*c*) the time and place at which the sale is to be held.

96. If the defaulting ryot or cultivator aforesaid does not, within fifteen days from the date of the service of the notice referred to in section 95, file a suit before the Collector to set aside the distress, or if such a suit is filed and is decided against him by the Collector and if the sale has not been countermanded

or postponed under section 89, section 103, or section 104, the sale officer, unless the said demand, with such expenses of the distraint as are allowed by him, is discharged in full, shall proceed in the manner hereinafter described to sell the property or such part of it as may be necessary to satisfy the demand with the expenses of the distraint and the costs of the sale.

97. The sale shall ordinarily be held in the village where the property was distrained or is stored or at the nearest place of public resort if the sale officer is of opinion that the property is likely to sell to better advantage there. In any case, the distrainer shall be bound to produce the property at the time and place of sale, and the cost of the transport thereof shall be considered part of the cost of distress.

98. Notwithstanding anything contained in this Chapter, crops or products which are in their nature speedily perishable shall be sold as early as possible by the distrainer and the sale-proceeds shall be deposited with the sale officer.

99. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

100. The property shall be sold by public auction, in one or more lots as the sale officer may think advisable, and if the demand with the costs of distress and sale is satisfied by the sale of a the distress shall be immediately withdrawn with respect to the remainder.

101. If, on the property being put up for sale, a fair price in the estimation of the sale officer is not offered for it, and

(*a*) if the defaulter, cultivator or owner of the property, or a person authorized to act in his behalf, or the distrainer applies to have the sale postponed until the next day or

(*b*) if a market is held at or near the place of sale,

the sale shall be postponed until the next day or until the next market day as the case may be, and shall then be completed, whatever price may be offered for the property.

102. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold and any deficiency in price, which may happen on such second sale, and all expenses attending such second sale shall be certified to the Collector by the sale officer and shall, at the instance either of the distrainer, the defaulter, or the cultivator, without prejudice to any other remedy which he may have, be recoverable in a suit before the Collector from the defaulting purchaser.

Any sum recovered under this section from the defaulting purchaser shall be dealt with under section 106 as if it were proceeds of the sale.

103. The sale officer shall bring to the notice of the Collector any material irregularity committed by the distrainer under colour of this Act, and may in such case postpone the sale pending the Collector's order.

104. (1) If it shall come to the knowledge of the Collector that the distrainer has not served on the ryot a written demand as required by section 78, or has failed to serve the list or description mentioned in section 79, or has failed to apply to the sale officer for an order under section 92, or that the distress was excessive, the Collector may either order the sale to proceed, or direct the issue of another notice or proclamation of sale, in which case he shall order that costs of the resale be borne by the distrainer.

(2) If the Collector finds that the distraint is vexatious or groundless, he may order the restoration of the distrained property.

105. When the purchase-money has been paid in full, the sale officer shall deliver the property to the purchaser and shall give him a certificate signed by himself, describing the property purchased and the price paid.

106. (1) From the proceeds of every sale of distrained property under this Act, the sale officer shall make a deduction at a rate not exceeding one anna in the rupee on account of the costs of the sale and shall remit the amount so deducted to the Tahsildar.

(2) He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distraint, and of the issue of the notice and proclamation of sale mentioned in section 95 to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

(3) The remainder shall be applied to the discharge of the arrear for which the distraint was made.

(4) The surplus (if any) shall be delivered to the person whose property has been sold, and he shall receive from the sale officer a receipt for any arrear discharged from the proceeds of sale.

(5) If either the distrainer, or the owner of the distrained property, shall be dissatisfied with the sale officer's decision, the Collector shall, on an application being made to him by either party, determine the expenses incurred in distraining the property and bringing it to sale.

107. No officer holding a sale of property under this Act and no person employed by or subordinate to such officer, shall either directly or indirectly bid for or acquire any interest in any property sold at such sale.

108. (1) When an arrear of rent is realised from a tenant of cultivator by proceedings in distraint by any person other than his immediate landlord the tenant or cultivator shall be entitled to deduct the amount so realised from any rent payable by him to such landlord, and such landlord, if he is not the defaulter, shall in like manner be entitled to deduct the same amount from any rent payable by him to his landlord, and so on, until the defaulter is reached.

(2) Nothing in this section shall affect the right or any tenant or cultivator making a payment under section 87 to institute a suit in a Civil Court for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

109. When any conflict arises between the right of a land-holder distraining produce over which he has a first charge under sub-section (1) of section 5 and the right of a person claiming under an attachment by a Civil Court, the right of the land-holder shall prevail; but if the property is sold by a Collector in consequence of such land-holder's distress the surplus proceeds of the sale

shall not be paid under section 106 to the person whose property has been sold but shall be deposited in the Court from which the order of attachment issued.

110. A tender of the amount of the arrears of rent claimed by the land-holder shall be deemed valid though made under protest, and on such tender being made the distrainer shall be bound to refrain from distraining or selling the property, and if a distraint has been made to release the property distrained provided that when the amount so tendered is received, the fact that the payment was made under protest shall be stated in the receipt given to the person making the payment.

Sale of Ryot's Holding.

111. When an arrear is not paid within the revenue year in which it accrued due, it shall be lawful for the land-holder to sell the holding or any part thereof, in the manner hereinafter provided, in satisfaction of the arrear and of interest thereon and of costs, if any, of the sale[1].

112. When the land-holder to whom an arrear is due intends to avail himself of the powers given by the last preceding section, he shall serve on the defaulter through the Collector a written notice stating the amount due for arrear, interest and costs, if any, the period for which and the holding in respect of which it is due, and informing him that if he does not pay the amount or file a suit before the Collector contesting the right of sale within thirty days from the date of service of the notice, the said holding or any part thereof specified in the said notice will be sold. Such notice shall be sent to the Collector within one year from the end of the revenue year for which the arrear is due.

Four copies of the notice together with the fee for service thereof shall be sent to the Collector, who shall cause service to be effected by delivering a copy to the defaulter or to his authorised agent, or to some adult male member of his family at his usual place of abode, or, if such service cannot be effected, by affixing a copy thereof on some conspicuous part of his last known residence, if he has any within ten miles of the holding, or on some conspicuous part of the holding.

Copies of the notice shall in every case be posted at conspicuous places on the land to which it relates and in the village where the land is situated.

113. Intimation of the date of service shall forthwith be given to the land-holder by post.

114. If the amount of the arrear is not paid and if no suit contesting the right of sale is instituted before the Collector within thirty days from the date of service of the said notice, or if such suit has been decided against the defaulter, the land-holder may apply to the Collector for sale.

115. (1) If no suit has been instituted such application shall be made within forty-five days of the posting by the Collector of intimation of service under section 113.

(2) If a suit has been instituted and it has been disposed of against the defaulter or withdrawn, such application shall be made within thirty days of the date of the disposal or withdrawal.

116. Immediately on receipt of such application, the Collector shall appoint an officer to conduct the sale.

[1] *See* pp. 276-278.

117. (1) The selling officer shall, by order, fix a date for the sale and cause it to be proclaimed by beat of drum in the village in which the holding is situated; he shall also post a copy of his order in some conspicuous pl ace in the village.

In fixing the date of sale, not less than thirty days shall be allowed from the date on which the aforesaid proclamation is made.

(2) The order and proclamation shall specify—

(*a*) the holding or part of the holding to be sold;

(*b*) the amount mentioned in the written notice under section 112 together with costs and subsequent interest, if any;

(*c*) any encumbrance subject to which the property is liable to be sold; and

(*d*) the time and place at which the sale is to be held.

118. If the said amount is not discharged in full, the selling officer shall proceed in the manner hereinafter described to sell the property or such part of it as may be necessary to satisfy the demand with the expenses and the costs of the sale.

119. The sale shall ordinarily be held in the village where the holding is situated or at the nearest place of public resort if the selling officer is of opinion that the property is likely to sell to better advantage there.

120. The property shall be sold by public auction in one or more lots as the selling officer may think advisable, but no such lot shall, except with the consent of the land-holder, be less than a revenue field; and if the demand with the costs of distress and sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder.

121. If, on the property being put up for sale, a fair price in the estimation of the selling officer is not offered for it, and if the defaulter or a person authorized to act in his behalf, or the land-holder applies to have the sale postponed until the next day, the sale shall be postponed until that day and shall then be completed, whatever price may be offered for the property.

122. Every such sale shall be stopped, if the land-holder withdraws his application for sale or if before the lot is knocked down, the amount mentioned in the proclamation and costs of the sale are tendered to the selling officer, or proof is given to his satisfaction that such amount has been paid to the Collector.

123. The price of every lot shall be paid at the time of sale, or as soon thereafter as the selling officer directs, and in default of such payment the property shall be put up again and sold and any deficiency in price, which may happen on such second sale and all expenses attending such second sale shall be certified to the Collector by the selling officer and shall, at the instance either of the land-holder or of the defaulter, without prejudice to any other remedy which he may have, be recoverable in a suit before the Collector from the defaulting purchaser.

Any sum recovered under this section from the defaulting purchaser shall be dealt with under section 127, as if it were proceeds of the sale.

124. (1) All purchase-money received by the selling officer shall forthwith be transmitted to the Collector.

(2) On payment of the purchase-money in full and on the expiration of thirty days from the date of sale, the Collector shall, if no application has been

made to set aside the sale under section 131 or if such application has been made and rejected, grant a certificate of sale to the purchaser stating the property sold, the name of the purchaser, the date of the sale and the sum paid, and shall place him in possession of the property sold.

125. When a holding or part of a holding is sold for arrears due in respect thereof, the purchaser shall take, subject to any right or interest which the ryot has created therein with the land-holder's permission in writing registered and subject also to any encumbrances created before the passing of this Act.

126. The portion of the holding brought to sale by the land-holder shall be as nearly as possible equal in value to the amount of arrears due and costs.

127. In disposing of the proceeds of a sale of a holding under this Chapter, the following rules shall be obersved, that is to say :—

(*a*) there shall first be paid to the land-holder the costs incurred by him in bringing the holding to sale ;

(*b*) there shall, in the next place, be paid to the land-holder the amount due to him for arrears and interest up to date of payment ;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the land-holder therefrom any rent which may have fallen due to him in respect of the holding between the date of application or suit, and the date of the sale and the defaulter shall receive from the selling officer a receipt for the amount so paid ; if the defaulter disputes the land-holder's right to receive any sum under this clause, the Collector shall register the dispute as a suit and shall proceed to determine it :

Provided that no payment shall be made to the land-holder under clauses (*a*) (*b*) and (*c*) of this section until after the expiration of thirty days from the date of sale.

(*d*) the balance (if any) remaining after the payment of the amount mentioned in clause (*c*) shall, subject to the order of any Civil Court to the contrary, be paid to the defaulter on his application, after the expiration of three months from the date of the sale.

128. (1) When a proclamation has been made for the sale of a holding or part of a holding and any person having an interest therein which would be affected by the sale, pass to the Collector or the selling officer the amount requisite under section 122 to prevent sale,—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at six per centum per annum and charged upon the holding ; and

(*b*) such charge shall take priority of every other charge on the holding, other than a charge for arrear of rent and any prior charge under this section.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

129. Where a proclamation has been made for the sale of a holding or part of a holding of a defaulting ryot, and any tenant or sub-tenant thereof, whose interest would be affected by the sale pays tot he Collector or to the selling officer

the amount requisite under section 122 to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord and so on, until the defaulter is reached.

130. A land-holder who has brought to sale a ryot's holding or part thereof for an arrear may bid for or purchase the holding or a part thereof.

131. (1) When a ryot's holding or part thereof is sold for an arrear due thereon, the defaulting ryot, or any person having a right or interest therein affected by the sale, may, at any time within thirty days from the date of sale, apply to the Collector to have the sale set aside on his depositing with that officer.

(*a*) for payment to the land-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, together with subsequent costs, if any, incurred by the land-holder in bringing the holding to sale, less any amount which may, since the date of the proclamation of sale, have been received by the land-holder, and

(*b*) for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Collector shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside.

132. The provisions of this Chapter shall be applicable, as far as may be, to the execution by a Revenue Court of any decree for arrears of rent.

133. The Collector, (*a*) in executing a decree for arrears in a suit under this Act or (*b*) on the application of the defaulter whose holding is to be sold under the provisions of this Chapter, may, before issuing an order for the sale of the holding or part thereof and on the defaulter's giving security for the amount of the debt with costs and interest to the satisfaction of the Collector, allow the defaulter time in which to pay the amount due, provided that any period or the aggregate of any periods so allowed shall not exceed two months unless the Local Government by general or special order allow a longer period.

134. The provisions contained in this chapter for the recovery of rent from a ryot by distraint and sale of moveable property shall apply, as far as may be, to—

(1) the recovery of rent by a land-holder froma tenant of private land in the estate, provided puttahs and muchalkas have been exchanged between them; and

(2) the recovery of rent by a land-owner under ryotwari settlement with the Government or in any way subject to the payment of land revenue direct to Government or any other registered holder of land in proprietary right from a tenant from whom he has taken a written agreement specifying the rent to be paid.

CHAPTER VII.

REPAIR OF IRRIGATION WORKS.

135. Any ryot or ryots holding irrigated land under a land-holder and paying not less than one-fourth of the rent of the ayakat under an irrigation

work or holding not less than one-fourth of the extent of the ayakat, may apply to the District Collector stating that the irrigation work whereby the land held by the applicant or applicants is served is out of repair; and that the land-holder upon his or their application has refused or neglected to execute necessary repairs and that he or they are unable in consequence to raise an irrigated crop, and praying for the issue of an order under section 137 for the repair of the said work. The application shall state in sufficient detail the nature of the repairs deemed necessary, and the extent of the land irrigated by the work and the rent derivable from it. The District Collector shall then by himself or by an officer subordinate to him, not below the rank of a Deputy Tahsildar, to whom he may depute the inquiry, cause to be served on the landholder a copy of the application and a notice to show cause, on the date to be stated in the notice, why the order prayed for should not issue The notice shall also be posted in the village or villages wherein the land irrigated is situated.

136. On the day fixed in the notice, or on any other date to which the inquiry may be adjourned, the District Collector or officer as aforesaid shall hear the applicant or applicants, the land-holder and any ryots of land irrigated by the work who may attend, and may take any evidence that he may think fit. If the inquiry is made by an officer other than the District Collector, he shall make a report thereon to the District Collector.

137. If the District Collector is satisfied that the rent payable to the land-holder in respect of the land irrigated by the work is higher than it would be if the land were not so irrigated and that the irrigation work is in such a state of disrepair as materially to prejudice the irrigation of the lands dependent upon it and that the state of disrepair is not due to the wrongful acts of the ryots or to omission to make such minor repairs as the ryots are bound to carry out under the provisions of Madras Act 1 of 1858, he may pass an order stating which of the works mentioned in the application or shown at the the enquiry are necessary for the restoration of the irrigation work to efficiency, and the estimated cost of the same, and requiring the land-holder to execute the said works within a specified time. The District Collector may also in the order declare that, if the land-holder refuses or within the time specified or such further time as the District Collector may allow fails to execute the works, the applicant alone or with any other ryots willing to join with him may be authorised on application made to the Collector, to execute any or all of the said works within a reasonable time to be fixed by the Collector. Provided that such works shall be works of repair only and shall not include additions or improvements unless with the consent of the land-holder, nor shall they include any petty works, such as the yearly clearance of supply and distribution channels, which by the custom of the country should be carried out by the ryots.

The District Collector shall not pass an order under this section if the land-holder establishes that the obligation to maintain the irrigation work is imposed upon an inamdar holding a dasabandam inam granted prior to the permanent settlement and confirmed but not enfranchised by the British Government or has been otherwise transferred from such land-holder, or unless he is satisfied that it is to the advantage of both the land-holder and the ryots that the work should be repaired.

138. (1) If the irrigation work serves partly an estate and partly Government land, the repair as aforesaid shall invariably be executed by the

District Collector, and after notice to the land-holder giving him an opportunity to examine the stated cost of the repair and urge his objection thereto, if any, the charges incurred shall be divided between the Government and the land-holder in proportion to the extent of land belonging to Government which is registered as entitled to irrigation from the work and the extent of land belonging to the land-holder for which he is entitled free of separate charge to irrigation from the work. The portion due by the land-holder shall be recoverable as an arrear of land revenue.

(2) Nothing in sub-section 1 shall apply to irrigation works belonging to the Government, which the Government are bound to maintain, and from which the land-holder is entitled to a supply of water free of charge.

(3) A landholder who is dissatisfied with an order of the District Collector under this section may sue in a Civil Court to have it set aside or modified on either of the following grounds :—

(*a*) that he is under no obligation to repair the irrigation work concerned.

(*b*) that the portion of the charge which he is liable to pay under sub-section 1 has been wrongly calculated.

If the order is set aside or modified, the Court shall direct the refund of any amount found to have been improperly levied.

139. If Collector has ordered under section 137 that the ryots may execute any work, the parties authorized to execute it may after such work has been completed, apply to District Collector for an order for the recovery of the cost. The District Collector shall then give the land-holder an opportunity of stating objections to the application, and shall take such steps as he may deem necessary to satisfy himself that the works have been executed properly and within the time fixed, and that the cost claimed is not excessive. He shall, if so satisfied, pass an order specifying such amount as he may find to be reasonably due on account of the works executed, and in such order may include the cost of estimates and inspection. He shall then, in the first instance, call upon the land-holder to pay the amount specified in the order; if the land-holder declines to pay the amount, the District Collector shall then pass an order for the recovery of the amount from the ryots holding land under the irrigation works. The order shall set out the amount payable by each ryot in proportion to the rent of the land so held by him. Any amount payable by the ryots or agreed to be paid by the land-holder under this section together with interest at six per centum per annum from the date of the order shall be recoverable as an arrear of land revenue.

140. The amount recovered, less the cost, if any, of inspection of the works executed shall be paid to the parties authorized to execute the same under section 137.

141. Every ryot from whom any sum has been recovered under the provisions of section 139 in respect of any irrigation work shall be entitled to deduct from the rent payable by him to the land-holder a sum equal to the difference between the irrigated and unirrigated rate for the land held by him under the said work. Where the unirrigated rate is not known, the Collector shall on application may determine the same with reference to the rates for dry lands of similar description and with similar advantages in the villages or neighbouring villages. Where the ryot holds both irrigated and unirrigated land in his holding

under a consolidated rent and the irrigated rate is not known, the Collector shall on application made determine the same.

Provided that such deductions shall cease and determine as soon as the amount which has been recovered under section 139 has been recouped with interest at six per centum per annum.

142. No Civil Court shall issue an injunction or, save as provided in section 138, entertain a suit regarding a District Collector's proceedings under this Chapter, but from any order issued by a District Collector under this Chapter other than our order under section 138, an appeal shall unless otherwise provided for in part B of the Schedule to this Act lie to the Board of Revenue, whose decision shall be final.

CHAPTER VIII.

ILLEGAL CESSES.

143. Land-holders shall not exact from their ryots under any name or under any pretence anything in addition to the rent lawfully payable. All stipulations and reservations for such additional payment shall be void.

144. Every ryot from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of the land has been exacted by the land-holder in excess of the rent lawfully payable, shall be entitled to recover by a suit before the Collector, in addition to the amount or value of what has been so exacted, such sum by way of penalty as the Collector thinks fit, not exceeding one hundred rupees or, when double such amount or value exceeds one hundred rupees not exceeding double that amount or value.

CHAPTER IX.

SUB-DIVISION AND TRANSFER OF HOLDINGS AND ESTATES.

145. (1) Where a ryot transfers a portion of his holding or where a holding is divided amongst co-sharers, it shall not be competent to the land-holder to object to the sub-division of the holding, provided that the distribution of the rent between the divisions shall be made by the land-holder or with his consent.

Provided also that no land-holder shall be bound to recognise the sub-division of a revenue field or part thereof, unless each sub-division is not less than five acres in extent, if the field be classed as unirrigated and one acre in extent, if the field be classed as irrigated or garden.

(2) In case such distribution be unfair or delayed for an unreasonable time, the Collector shall on application by the ryot make a fair apportionment which shall be binding on the persons interested.[1]

146. (1) Whenever a holding or any portion thereof is transferred by the act of a ryot, or in execution of a decree or order of a Civil Court passed against him, or by a sale for arrears of Government revenue or for any demand recoverable as such arrears, such transfer shall, subject to the provisions of section 145, be recognised by the landholder if notice in writing be communicated to him by the transferor and transferee or a certified copy of a decree order of a Civil Court establishing a transfer is produced, or in cases in which a transfer is effected by sale under the order of any Court or public officer the sale certificate or certified copy thereof is produced.

[1] *See* p. 182.

(2) On notice in writing given by the transferor and transferee or by the co-sharers, as the case may be, the land-holder shall enter into separate engagements with the holders of the sub-divisions from the revenue year next succeeding that in which the notice has been given.

147. (1) All acts and proceedings commenced or had under this Act against the transferor or the co-sharers prior to the giving of the notice under section 146 or prior to the production of such copy of the decree or order or certificate of sale under section 146 in so far as such acts and proceedings affect or purport to affect the land on which the arrear is due, the crops growing thereon and the products gathered thereform, shall as against the transferee or co-sharer be as valid and effectual as if such acts and proceedings had been commenced or had against the transferee or co-sharer himself and he had been the defaulter.

(2) The notice required under section 145 shall be served in the manner provided by sub-section (2) of section 78.

(3) The transferor or co-sharer shall not, until notice is given in writing as aforsesaid, by reason only of the transfer or division, cease to be subject to any of the liabilities attaching to him as a ryot.

148. When any land-holder transfers the whole or a portion of his estate of land, or when any estate or land is partitioned among co-sharers, the land-holder and the transferee or the co-sharer as the case may be, shall give notice of such transfer or partition, by publication in the District Gazette and in such other manner as the Local Government may by rule direct, to the ryots as the case may be in occupation of the land transferred or partitioned, and, unless and until such notice is given, no ryot shall be liable to the transferee or co-sharer for any rent which become due after the transfer or partition and was paid to the land-holder before notice of such transfer or partition was given to the ryot, and all proceedings against the land-holder taken by any of the ryots to whom no such notice was given shall be as effectual and binding on the transferee or co-sharer as if they had been taken in the first instance against the transferee or co-sharer himself.

CHAPTER X.

RELINQUISHMENT AND EJECTMENT.

149. (1) Every ryot other than a ryot of old waste bound by lease or othe written agreement for a fixed period may, with effect from the end of any revenue year, relinquish his holding or an part thereof, not being less than a revenue field, proivded that the portion relinquished is accessible, and provided that the apportionment of the rent on the part retained shall be made by the landholder subject to revision by the Collector on application by the ryot. The portion retained shall be treated as a new holding and a fresh puttah and muchalka shall be exchanged in respect of the same for the revenue year next succeeding that in which notice of relinquishment is given.

(2) A ryot who so relinquishes his holding or part of his holding shall be liable at the suit of the land-holder before the Collector to indemnify him against any loss of rent on the holding or the part thereof for the revenue year next following the date of the relinquishment, unless the ryot gives to the land-holder on or before the first day of April notice of his intention to relinquish.

150. (1) If the land-holder refuses to receive any notice under sub-section (2) of section 149, the ryot may, not later than the fifteenth day of April, make an application to a Revenue officer, who shall thereupon cause the notice to be served on such land-holder, the ryot paying the costs of service.

(2) Every such notice shall be deemed to have been received at the time it was first tendered.

151. (1) A land-holder may institute a suit before the Collector to eject an occupancy ryot from his holding only on the ground that the ryot has materially impaired the value of the holding for agricultural purposes and rendered it substantially unfit for such purposes.[1]

(2) Notwithstanding anything contained in this section a land-holder may sue before the Collector for compensation in addition to, or in lieu of, ejectment: or for an injunction, or for the repair of the damage or waste, with or without compensation.

152. If in any suit under the preceding section an occupancy ryot is found liable to ejectment, but it appears that the damage to the holding admits of being repaired, or that pecuniary compensation would afford adequate relief, the decree shall provide that, if within one month from the date thereof or such further time as the Collector for reasons to be recorded may allow, the ryot does not repair the damage or pay as compensation a sum which shall be fixed by the Collector and specified in the decree, he shall be ejected.

153. A non-occupancy ryot shall, subject to the provisions of this Act, be liable to ejectment by suit before the Collector on one or more of the following grounds, and not otherwise, namely :—

(*a*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy ;

(*b*) on the ground that a decree for arrears of rent in respect of the holding passed against him or any person whose legal representative he is remains unsatisfied at the expiry of the revenue year following the one in which the decree was passed ;

(*c*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 40 ;

(*d*) on the ground that without the permission of the land-holder the ryot has mined or quarried or excavated gravel or clay for profit within his holding ; and

(*e*) where he has been admitted to occupation of the land under a registered lease for a term exceeding five years, on the ground that the term of the lease has expired.

Nothing in this section shall affect the liability of any person who is a non-occupancy ryot according to the provisions of this Act to be ejected on the ground of expiry of the terms of a lease granted before the commencement of this Act.[2]

154. (1) If a ryot of old waste or his predecessor in interest has made an improvement in respect of his holding in accordance with this Act or with the landholder's consent, he shall not be ejected until he has received compensation for the improvement if compensation has not already been paid therefor unless the improvement was begun by him after the institution of the proceedings which resulted in the decree or order for his ejectment.

1 *See* p. 184. 2 *See* pp. 188—190.

(2) The Revenue Court making a decree or order for the ejectment of the ryot shall determine the amount of compensation, if any, due to him under this section and shall stay execution until the land-holder deposits the amount less any arrears of rent or costs that have been ascertained by the proceedings for such ejectment to be due to him from the ryot.

(3) No compensation shall be claimed under this section for improvement where the ryot has made the improvement in pursuance of a contract binding him in consideration of some substantial advantage to him to make the improvement without compensation, and he has obtained the advantage.

(4) The Local Government may make rules requiring the Revenue Court to associate with itself, for the purpose of estimating the compensation to be awarded for improvements, such number of assessors as the Local Government think fit, and determining the qualifications of those assessors and the mode of selecting them.

(5) In estimating the compensation to be awarded for improvements regard shall be had—

(*a*) to the amount by which the letting value, or the produce of the holding or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects; and

(*c*) to any reduction or remission of rent or any other advantage given by the land-holder to the ryot in consideration of the improvement.

155. The following rules shall be applicable in the case of every ryot ejected from a holding:—

(1) When the ryot has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landholder, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the land-holder the estimated value of the labour and capital expended by the ryot in preparing the land and sowing, planting and tending the crops, together with reasonable interest thereon.

(2) When the ryot has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops on that land, he shall be entitled to receive from the land-holder the estimated value of the labour and capital expended by him in so preparing the land, together with reasonable interest thereon:

Provided that a ryot shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section when, afer the commencement of proceedings by the land-holder for his ejectment, he has cultivated or prepared the land contrary to local usage:

Provided also that the rent, if any, payable to the land-holder by the ryot at the time of ejectment may be set off against any sums payable to the ryot under this section.

156. When a land-holder elects, under clause (1) of the last foregoing section, to allow a ryot to retain possession of any land for the purpose specified in that clause, the ryot shall pay to the land-holder, for the use and occupation of

the land during the period for which he is allowed to retain possession of the same, rent at the rate at which the ryot was holding.

157. Notwithstanding any contract to the contrary, a tenant of old waste shall not be ejected by the landholder as such except on the ground mentioned in section 153, or in accordance with and subject to the provisions of sections 48, 49, 154 and 155 of this Act.

Eviction of Tenants.

158. When any tenant of private land in an estate shall be in arrear at the end of a revenue year, and when there is no sufficient distress upon the premises to satisfy the arrear, the land-holder or his authorized agent may apply to the Collector for a warrant, authorizing him to enter upon and take possession of the premises. Such warrant shall be granted upon the production of a written statement of the person applying for the warrant, which statement shall contain the name of the defaulter, the description and extent of the premises, the amount due for arrears, interest and costs of distraint if any, and the date at which the arrear fell due, and also a declaration that there is no sufficient distress upon the premises. Such statement shall be filed in the office from which the warrant issues.

159. The warrant shall state the defaulter's name, the whole amount due and the description and extent of the premises, and shall set forth that, unless payment is made within fifteen days, the defaulter will be turned out of possession. The Collector may, for special reasons, extend the period of fifteen days mentioned in this section.

160. The warrant shall be entrusted to an officer of police who shall serve it after the manner laid down in sub-section (2) of section 78. If within fifteen days after service, or within the period extended by the Collector under the last foregoing section, the amount named in the warrant is not discharged, and if no suit has been filed by the defaulter before the Collector to set aside the warrant, or if such suit has been decided against the defaulter, the police officer shall place the land-holder in possession.

161. Where possession has been delivered under the last preceding section, the defaulter may file a suit in a Civil Court within three months from the date of delivery for an order to set aside the proceedings and to restore him to possession, and subject to the result of such suit, if any, the defaulter's right and interest in the premises shall cease and determine.

162. Nothing in sections 158 and 161 shall apply to any land in which the tenant has a saleable interest.

163. (1) Any person who otherwise than by inheritance or legal transfer occupies ryoti land in an estate and has not been admitted as a ryot by the land-holder shall be liable to ejectment as a trespasser by suit in a Civil Court.

(2) In any suit for ejectment under this section, the land-holder shall also be entitled to recover any sum payable to him under section 45.

CHAPTER XI.

SURVEY, RECORD-OF-RIGHTS, AND SETTLEMENT OF RENTS.

166. (1) The Local Government may make an order, directing that a survey be made and record-of-rights be prepared by a Revenue officer in respect of an estate or portion of an estate in the following cases, namely :—

(a) where—

i. the land-holder or ryots, or

ii. not less than one-half of the total number of land-holders, or

iii. a land-holder or a proportion of the land-holders whose interest, or the aggregate of whose interests, respectively, in the estate or portion thereof is not less in value than one-half of the total shares of all the land-holders therein, or

iv. not less than one-fourth of the total number of ryots—

applies, or apply for such an order, depositing or giving security for such amount for the payment of expenses as the Local Government direct;

(b) where, in the opinion of the Local Government, the preparation of such a record is required to secure either the ryots generally or the land-holder of an estate or portion of an estate in the enjoyment as such of their or his legal rights or is calculated to settle or avert a serious dispute existing or likely to arise between the ryots generally and their land-holder; or

(c) where the estate is an estate managed by the Government or is under the superintendence of the Court of Wards.

A notification in the Official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

(3) The survey shall be made under the Madras Survey and Boundaries Act, 1897, and the record-of-rights shall be prepared in accordance with the rules prescribed by the Local Government, and may, if the Local Government so direct, include a record of all rights and obligations of each ryot and land-holder in respect of—

(a) the use by the ryots of water for agricultural purposes whether obtained from a tank, well, or any other source of supply;

(b) the repair and maintenance of works for securing a supply of water for the cultivation of the land held by each ryot whether or not such works be situated within the boundaries of such land.

165. When an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and shall include, either without or in addition to other particulars, some or all of the following, namely:—

(a) the name of each ryot's land-holder and of each land-holder in the estate or portion thereof;

(b) the name of the ryot, and whether the ryot is an occupancy or a non-occupancy ryot, or where there is no ryot, the name of the occupant;

(c) the situation, extent and one or more of the boundaries of the land held by the ryot, as shown in the survery map of the village;

(d) whether the land is irrigated, unirrigated, or garden land and if irrigated, whether double or single crop;

(e) the rent lawfully payable at the time the record is being prepared, and whether the ryot is entitled to the benefit of proviso (a) to clause (i) of section 30;

(*f*) how the rent has been fixed, whether by decree or under the provisions of this Act or otherwise;

(*g*) any rights lawfully incident to the holding;

(*h*) if the rent is a gradually increasing rent, the times at which and steps by which it increases;

(*i*) if the land is claimed to be held free of rent, whether rent is actually paid or not; and when rent is not paid, whether the occupant is entitled to hold the land without such payment and if so entitled, on what authority; and the rent payable, if the land were liable to rent;

(*j*) the record of irrigation rights ordered under sub-section (3) of section 164.

166. (1) When the officer preparing the record-of-rights has, after making such inquiry as he sees fit, completed a preliminary record for the estate or part of the estate, he shall publish a draft thereof in the prescribed manner and for the prescribed period, and shall receive and consider any objection to any entry therein or to any omission therefrom, which may be made during the period of publication.

(2) When such objections have been considered and disposed of according to such rules as the Local Government shall prescribe, the officer aforesaid shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the reccord has been duly made under this chapter.

(3) Separate draft or final records may be published under this section for different portions of the estate.

167. (1) In any suit or other proceeding in which a record-of-rights prepared and published under this chapter or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be presumed to have been finally published, unless this is expressly denied, and a certificate signed by the Revenue officer or by the Collector of any district in which the estate or part thereof to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published under this chapter, be conclusive evidence of such publication.

(2) The Local Government, may, by notification, declare with regard to any estate or portion of an estate that a record-of-rights has been finally published for every village included therein, and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until the contrary is proved.

168. (1) If within two months from the date of final publication of the record-of-rights under sub-section (2) of section 166, either the land-holder or the ryots apply for a settlement of the rent, provided that in the case of ryots the application is made by holders of not less than one-fourth of the total extent of the holdings in the village, the Revenue officer shall, if the Local Government so direct, settle a fair and equitable rent in respect of the land.

Explanation.—A land-holder may apply for a settlement of rent notwithstanding that his estate or part thereof has been temporarily leased.

(2) In settling rents under this section, the officer shall presume until the contrary is proved that the existing rent or rate of rent is fair and equitable and shall have regard to the provisions of this Act for determining the rates of rent payable by a ryot.

(3) The Revenue officer may in any case under this section propose to the parties such rent or rate of rent as he considers fair and equitable ; and the rent so proposed, if accepted orally or in writing by the parties, may be recorded as the fair and equitable rent and shall be deemed to have been duly settled under this Act.

(4) Where the parties agree among themselves, by a compromise or otherwise, as to the amount of the rent, the Revenue officer shall satisfy himself that the amount agreed upon is fair and equitable, and if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent. If not so satisfied, he shall himself settle a fair and equitable rent as provided in sub-sections (2) and (3).

169. (1) When a settlement has been completed under section 168, the Revenue officer shall cause a record thereof to be made, showing the name of the land-holder and the ryot, the extent of the holding and such other particulars as the Local Government may direct and the amount of the rent settled therefor and shall cause a copy thereof to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry in such record or omission therefrom, during the period of publication, and shall dispose of such objections according to such rules as the Local Government may prescribe.

(2) The Revenue officer may, of his own motion or on the application of any party aggrieved, at any time before the settlement record is submitted to the confirming authority under section 170, revise any rent entered therein.

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

170. (1) When all objections have been disposed of under section 169 the Revenue officer shall submit the settlement record to the confirming authority appointed by the Local Government with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the settlement with or without amendment, or may return it for revision :

Provided that no entry shall be amended, or omission supplied until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After it has been sanctioned by the confirming authority, the settlement record shall be incorporated in the record-of-rights published under sub-section (2) of section 166, and the record-of-rights as so amended shall be finally re-published in the prescribed manner, and such publication shall be conclusive evidence that the record has been duly made.

171. An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue officer on any objection made under section 169 ; and such appeal shall lie to such superior Revenue authority as the Local Government may by rule prescribe or to an officer specially empowered by the Local Government in this behalf.

172. The Board of Revenue may, in any case on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the final publication under sub-section (2) of section 166, or if there has been a settlement of rent under section 168, two years from the date of re-publication under sub-section (3) of section 170, but not so as to affect any order passed by a Civil Court under section 173.

Provided that no such direction shall be made until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter.

173. (1) Any person aggrieved by an entry in a settlement record prepared under sections 168 to 171 and incorporated in a record-of-rights finally published under sub-section (3) of section 170 or by an omission to settle a rent, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit must be instituted within six months from the date of the final publication of the record-of-rights under sub-section (3) of section 170 or, if an appeal has been presented to a Revenue authority under section 171, then within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds, and on no others, namely :—

(*a*) that the relation of land-holder and ryot does or does not exist ;

(*b*) that the land is not liable to the payment of rent ;

(*c*) that the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent ;

(*d*) that any entry made under clauses (*d*), (*e*) and (*j*) of section 165 is incorrect ;

(*e*) that special conditions in respect of holding at a favourable rate have been wrongly recorded or omitted ;

(*f*) that the Revenue officer has wrongly fixed the date from which the operation of the settled rent under the provisions of section 177 should take effect.

The Secretary of State for India in Council shall not be made a defendant in any such suit.

(4) If the Court finds that the entry relating to rent is incorrect it shall, in cases (*a*) and (*b*) mentioned in sub-section (3), declare that no rent is payable, or direct that the Collector shall fix a fair and equitable rent ; in case (*c*) it shall declare that the land is liable to rent, in cases (*d*) and (*e*) it shall decide what the entry shall be ; and in case (*f*) it shall declare the date from which the rent settled is to take effect.

(5) When a Civil Court has passed final orders or a decree under this section, it shall notify the same to the Collector of the district.

174. A note of all decisions on appeal under section 171 and of all orders or decree of a Civil Court notified to the Collector under sub-section (5) of section 173 shall be made in the record-of-rights with which the settlement record has been incorporated under section 170, and such note shall be considered as part of the record.

175. (1) Any Revenue officer especially empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from the date of any order or decision under section 168 or section 169, correct any *bona fide* mistake, whether it was made by himself or by any other Revenue officer, not superior in grade to himself, but not so as to affect any order passed or decree made under section 171 or section 173 :

Provided that no such order or decision shall be so corrected if an appeal from it is pending or has been decided under sections 171, 173 or 179 or until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter.

(2) Any Revenue officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 166, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona fide* mistake :

Provided that no such correction shall be made if an appeal affecting such entry is pending or has been decided under sections 171, 173 or 179, or until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter.

176. Subject to the provisions of section 173, all rents settled under sections 168 to 170 and entered in a record-of-rights finally published under section 166, or settled under section 171 shall be deemed to have been correctly settled and to be fair and equitable rent within the meaning of this Act.

177. When any rent is settled under this chapter the settlement shall take effect from the beginning of the revenue year next after the date of the final order or decision fixing the rent, and shall not thereafter be enhanced for a period of twenty years except on the grounds specified in clauses (ii) and (iii) of section 30 or of a subsequent alteration in the area of the holding nor reduced within the said period save on the ground of alteration in the area of the holding or on the ground specified in clauses (*a*) and (*b*) of sub-section (1) of section 38.

178. (1) When an application has been made under section 168, no suit or proceeding shall be commenced or continued in any Civil or Revenue Court under sections 30, 38 and 40 until after the final publication of the record-of-rights under sub-section (3) of section 170.

(2) When an order has been made under section 164, directing the preparation of a record-of-rights, no Civil or Revenue Court shall entertain or proceed with any suit or application for the alteration of the rent in the area to which the record-of-rights applies until after the final publication of such record-of-rights.

179. No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this chapter, or in respect of the framing, publication, signing or attestation of such a record or of any part of it, or, save as provided in section 173, for the alteration of any entry in such a record of a rent settled under sections 168 to 172.

Provided that any person who is dissatisfied with any entry in, or omission from, a record-of-rights framed in pursuance of an order made under sub-section (1) of section 164, which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877.

180. (1) When the preparation of a record-of-rights under this chapter has been directed or undertaken, the expenses incurred by the Government in carrying out the provisions of this chapter in an estate or part thereof, or such portion of those expenses as the Local Government may direct, shall be defrayed by the land-holder and ryots in the estate or part thereof and the holder of any land held on favourable terms within such estate if such land is included in the record-of-rights in such proportions as the Local Government, having regard to all the circumstances, may determine; and the proportion of those expenses so to be defrayed by any person shall be deemed to be land revenue and may be recovered as arrears of land revenue under the provisions of the Madras Revenue Recovery Act, 1864, or the Madras City Land Revenue (Amendment) Act, 1867, as the case may be.

(2) The cost of the preparation of copies of survey maps and records-of-rights prepared under this chapter for distribution to land-holders and ryots shall be deemed to be part of the expenses incurred in carrying out the provisions of this chapter.

CHAPTER XII.

LAND-HOLDER'S PRIVATE LAND.

181. Nothing in sections 6, 8, 10, 11, 12, 19 and 46 shall confer a right of occupancy in, or shall apply in any way to, a land-holder's private land[1].

Provided that nothing contained in this section shall prevent a land-holder from converting his private land into ryoti land.

182. The Local Government may make an order, directing a Revenue officer to make a survey and record of all the land-holder's private land in a specified local area.

No order under this section shall be questioned in any Civil or Revenue Court.

183. (1) In the case of any land alleged to be a land-holder's private land, on the application of the land-holder or of any occupant and on his depositing the required amount for expenses, a Revenue officer may, subject to rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a land-holder's private land.

(2) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue officer shall not record any land as a land-holder's private land, unless it is proved to be such by satisfactory evidence of the nature described in section 185.

184. When a Revenue officer proceeds under either section 182 or section 183, the provisions of sections 166, 167, 179 and 180 shall, so far as may be, apply.

185. When in any suit or proceeding it becomes necessary to determine whether any land is the land-holder's private land, regard shall be had to local custom and to the question whether the land was before the first day of July 1898 specifically let as private land and to any other evidence that may be produced, but the land shall be presumed not to be private land until the contrary is shown. Provided that all land which is proved to have been cultivated as private land by the land-holder himself, by his own servants or by hired labour with his own or hired stock for twelve years immediately before the commencement of this Act, shall be deemed to be the land-holder's private land.

[1] *See* pp. 190—192.

CHAPTER XIII.

ACQUISITION BY LAND-HOLDER OF LAND FOR BUILDING AND OTHER PURPOSES.

186. (1) A principal Civil Court of original jurisdiction may on the application of a land-holder,

and on being satisfied that he is desirous of acquiring the whole or part of a holding in his estate for some sufficient purpose, having relation to the good of the holding of the estate, including the use of the ground as building ground or for any religious, educational or charitable purpose or for the opening and working of mines.

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient, authorise the acquisition thereof by the land-holder upon such conditions as the Court may think fit, and require the ryot to sell his interest in the whole or such part of the holding to the land-holder, upon such terms as may be approved by the Court, including full compensation to the ryot.

(2) In determining the amount of compensation, the Court shall be guided, so far as may be practicable, by the provisions of sections 23 and 24 of the Land Acquisition Act I of 1894, and shall add fifteen per centum to the full value of the land and improvements made by the ryot as compensation for the compulsory acquisition.

Provided that, if the land has been acquired for the opening and working of mines, the Court shall, if the ryot has any right in the minerals, award compensation for such right.

CHAPTER XIV.

CONTRACT.

187. (1) Nothing in any contract between a land-holder and a ryot made before or after the passing of this Act—

(*a*) shall take away or limit the right of the ryot to make improvements in accordance with the provisions of this Act;

(*b*) shall take away or limit the right of an occupancy ryot to use the land as provided by section 11;

(*c*) shall take away the right of an occupancy ryot to sue or apply for a reduction of rent on the grounds stated in clauses (*a*) and (*b*) of sub-section (1) of section 38 or sub-section (2) of section 32, or except in the case of any subsisting lease for a fixed period made before the first day of January 1908 on the ground stated in clause (*c*) of sub-section (1) of section 38;

(*d*) shall take away the right of an occupancy ryot to apply for an alteration of rent under the provisions of section 42;

(*e*) shall take away the right of a land-holder or an occupancy ryot to sue for a commutation of rent under section 40;

(*f*) shall take away the right of an occupancy ryot to surrender his holding in accordance with section 149; or

(*g*) shall entitle a land-holder to eject a ryot otherwise than in accordance with the provisions of this Act.

(2) Nothing in any contract between a land-holder and a ryot made after the passing of this Act shall effect the provisions of section 61 relating to interest payable on arrears of rent so as to increase the amount of interest payable.

188. Nothing in any contract between any land-holder and a ryot of old waste made before or after the passing of this Act shall take away or limit the right of the ryot to acquire the status of occupancy ryot in respect of such land.

CHAPTER XV.

JURISDICTION AND PROCEDURE.

189. (1) A Collector or other Revenue officer specially authorised under this Act shall hear and determine as a Revenue Court all suits and applications of the nature specified in Parts A and B of the schedule and no Civil Court in the exercise of its original jurisdiction shall take cognizance of any dispute or matter in respect of which such suit or application might be brought or made[1].

(2) Decrees and orders passed under sub-section (1) shall be subject to appeals as provided in the sixth column of Parts A and B of the schedule.

(3) The decision of a Revenue Court or of an appellate or revisional authority in any suit or proceeding under this Act on a matter falling within the exclusive jurisdiction of the Revenue Court shall be binding on the parties thereto and persons claiming under them, in any suit or proceeding in a Civil Court in which such matter may be in issue between them.

190. (1) A second appeal shall lie to the Board of Revenue against the orders passed on appeal by a District Collector in the case of an application under section 15 or a suit under section 40.

(2) Notice of the hearing of the second appeal shall be given to the parties and they shall be entitled to be heard either in person or by their respective pleaders or duly authorized agents.

191. The period of limitation for an appeal under sections 189 and 190 shall run from the date of the order or decree appealed against excluding the time occupied in obtaining a copy of such order or decree and shall be as follows; that is to say :—

(*a*) When the appeal lies to the District Court or District Collector—thirty days;

(*b*) when the appeal lies to the Board of Revenue—sixty days.

192. Subject to the other provisions of this Act and subject to the following modifications and additions, the provisions of the Code of Civil Procedure shall apply to all suits, appeals and other proceedings under this Act so far as they are not inconsistent therewith :—

(*a*) Sections 121 to 127, both inclusive, 129, 305, 310 A and 313, sections 320 to 326 (both inclusive), and Chapters XX, XXVI, XXXIII, XXXIX, XL, XLIII and XLIV, of the Code of Civil Procedure, shall not apply to any such suit, appeal or other proceeding;

and section 25 of the said Code shall apply only to the transfer of appeals, under this Act from the Court of one District Judge to the Court of another District Judge.

(*b*) Applications under sections 68, 71 and 74 may be disposed of without the issue of notice to the other party.

[1] *See* pp. 192-197.

(*c*) In clauses (*a*) and (*c*) of section 37 of the said Code, for the words "not resident" shall be substituted the words "whether resident or not."

(*d*) (i) The plaint shall specify, in addition to the particulars mentioned in section 50 of the said Code, the name of the village in which the land to which the suit relates is situated, the designation, if any, of the land and a description of the land sufficient for its identification ;

(ii) where the suit is for the recovery of rent due on land situated within an area in which a record-of-rights has been prepared and published, the plaint shall further contain a statement of the rent of the holding according to the record-of-rights.

Provided that, if the Court sees fit at any time to require it, a copy of, or extract from, the record-of-rights relating to the holding shall be produced by the plaintiff, or shall, if necessary, on the requisition of the Court, be supplied by the Collector on payment by the plaintiff or the defendant as the Court may direct of such fee as the Local Government may by rule under this Act prescribe ;

(iii) if the suit is for arrears of rent the plaint shall contain a statement of account showing the instalments payable for the period to which the suit relates, the amount, if any, received, and the amount claimed to be due.

(*e*) No set-off whether legal or equitable shall be pleaded by way of defence to any suit under this Act.

(*f*) When any rent roll or collection or measurement papers have been produced by a land-holder in any Court in a suit pending therein copies of or extracts from such documents, which have been certified by a duly authorised officer of such Court to be true copies or extracts, may be admitted in evidence in proof of the originals in any other suit instituted in the same or another Court unless the Court in which such copies or extracts are produced sees fit to require the production of the originals.

(*g*) The Court when passing the decree in a suit for the recovery of rent may, on the oral application of the decree-holder, order immediate execution thereof.

(*h*) To the particulars not liable to attachment or sale under section 266 of the said Code shall be added "manure stocked by an agriculturist."

(*i*) Standing timber, growing crops, or other products of the earth may be attached and sold in execution of a decree in the same manner as moveable property, and if the property attached is growing crops or other products of the earth, the judgment-debtor and the decree-holder shall have the same rights in respect of the tending, gathering and storing thereof as the cultivator and the distrainer, respectively, would have had under section 83 if such crops or products had been distrained for an arrear of rent.

193. (1) A suit for enhancement or reduction of rent may be instituted against or by any number of ryots collectively :

Provided that all such ryots are ryots of the same land-holder, and that all the holdings in respect of which the suit is instituted are situated in the same village and that the grounds of enhancement or reduction are the same.

(2) No decree shall be passed in any such suit affecting the interests of any person unless the Collector is satisfied that the person has had an opportunity of appearing and being heard.

(3) The decree shall specify the extent to which each of the ryots is affected thereby.

194. (1) In any suit or in any proceeding under this Act to recover rent if a ryot admits that rent is due from him but pleads that it is due not to the plaintiff or applicant but to a third person, or pleads that the provisions of this Act have not been complied with, the Collector shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the ryot pays into his Court the amount so admitted to be due.

(2) Where such a payment is made and the plea is that the rent is not due to the plaintiff or applicant but to a third person, the Collector shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person, within three months from the receipt of the notice, institutes a suit before the Civil Court against the plaintiff or applicant and therein obtains an order restraining payment, the rent shall be paid out to the plaintiff or applicant on his application.

(4) Nothing in this section shall affect the right of any person to recover by suit in a Civil Court from the plaintiff or applicant any payment made to him under sub-section (3).

195. In any suit or proceeding under this Act to recover rent if a ryot admits that rent is due from him to the plaintiff or applicant but pleads that the amount claimed is in excess of the amount due, the Collector shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the ryot pays into his Court the amount so admitted to be due.

196. When a ryot is liable to make a payment into the Court of the Collector under section 194 or section 195 if the Collector thinks that there are sufficient reasons for so doing, he may take cognizance of the ryot's plea on his paying such reasonable portion of the amount as the Collector directs.

197. When a ryot makes a payment under section 194 or section 195, the Collector shall give the ryot a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the person lawfully entitled to the rent.

198. If it appears to the Collector before whom a suit for enhancement or reduction of rent has been instituted against or by a number of ryots collectively that the suit cannot be conveniently tried or disposed of as one suit, such officer, may, at any time before the first hearing, of his own motion or on the application of any of the parties, or if the parties agree, at any subsequent stage of the suit, order separate trials of the suits had against or by each ryot or make such other order as may be necessary or expedient for the separate disposal thereof.

199. (1) The provisions of section 375 of the Code of Civil Procedure shall not apply to any suit or application between land-holder and ryot as such.

(2) If any suit or application between land-holder and ryot as such is adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfies the plaintiff in respect to the whole or any part of the matter of the suit or application the Court or the Collector may pass a decree or order in accordance

with such agreement, compromise or satisfaction, so far as t relates to the suit or application ;

but may refuse to do so if, for reasons to be recorded, the Court or the Collector, as the case may be, considers such agreement, compromise or satisfaction to be unfair and inequitable.

(3) A decree or order passed in accordance with any lawful agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject-matter of the suit or application as is dealt with by such agreement, compromise or satisfaction.

200. (1) A suit for enhancement, reduction or commutation of rent or an application for alteration of rent with reference to area shall be instituted or made only by or against the land-holder in possession of the estate or the part concerned as the case may be.

Provided that—

(i) where it appears that such land-holder is not the owner of the estate or the part concerned, notice of the suit or application shall, at the expense of the plaintiff or applicant, be given by the Court to the owner who shall be made a party to the suit or application ;

(ii) where such land-holder is not the owner of the estate or the part concerned and is unwilling to institute a suit for enhancement or commutation of rent or to make an application for alteration of rent, the owner may institute such suit or make such application making the land-holder in possession a party thereto ; but any rent which may be fixed by the Court in such suit or application shall be payable only to the land-holder entitled to possession of the estate or the part concerned.

(2) Proceedings under Chapter VII shall be taken against the land-holder in possession but if such land-holder is not also the owner, the latter shall be made a party to the proceedings.

(3) Either the owner or the land-holder, where the land-holder entitled to the present possession of the estate is not the owner thereof, may as land-holder make an application under sections 164, 168 or 186, but notice of the application shall be given to the other.

201. A decree or order for payment of money passed by a Revenue Court or any appellate or revisional authority may be transferred only to a Civil Court for execution.

202. The High Court may, with the approval of the Local Government, make rules consistent with this Act, declaring that any portion of the Code of Civil Procedure shall not apply to suits between land-holder and ryot as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

203. (1) Where for any local area a record-of-rights has been prepared and finally published under sub-section (2) of section 166 or sub-section (3) of section 170, in all suits between land-holder and ryot as such, the plaintiff shall annex to the plaint or, if for any cause which the Court deems sufficient he fails to do so, shall produce within a reasonable time to be fixed by the Court, a certified copy

of any entry in the record-of-rights relating to the land in respect of which the suit is brought.

(2) In deciding such suits the Court shall have regard to the entries produced under sub-section (1), unless such entries have been proved to be incorrect, and when the Court passes a decree at variance with such entries it shall record its reasons for so doing.

(3) No fees shali be charged for the grant of certified copies of entries in a record-of-rights required for the purpose specified in sub-section (1).

(4) In the case of such suits, the following clause shall be deemed to be added to section 54 of the Code of Civil Procedure as clause (*e*), namely :

(e) In any suit to which section 203 of the Madras Estates Land Act, 1908, applies, if the certified copy therein mentioned is not annexed to the plaint, and the plaintiff, on being required by the Court to produce it, fails to do so within the time allowed by the Court.

204. (1) The District Collector may, by written order, distribute, in such manner as appears fit, any business cognizable under this Act by any Collector or other Revenue officer in the district and by like order he may withdraw any case pending before such Collector or other Revenue officer and either dispose of it himself, or by written order refer it for disposal to any other Collector or Revenue officer in the district.

(2) The Board of Revenue shall have the like powers of distribution, withdrawal and reference in respect of all District Collectors and, notwithstanding any order of the District Collector passed under sub-section (1), in respect of Revenue officers subordinate to him.

205. The Board of Revenue or the District Collector may call for the record of any proceeding before a Revenue officer from whose decision no appeal lies, if such officer appears to have exercised a jurisdiction not vested in him by law, or to have failed to exercise a jurisdiction so vested, or while acting in the exercise of his jurisdiction to have contravened some express provision of law affecting the decision on the merits, where such contravention has produced a serious miscarriage of justice ; and the Board of Revenue or the District Collector, as the case may be, may, after hearing the parties if they attend, pass such order as seems fit.

206. The Local Government may invest any Revenue or Judicial officer with all or any of the powers of a Collector, for any local area, in respect of all or any classes of original suits or proceedings instituted under this Act, and may withdraw such powers, and the decisions passed by such Revenue or Judicial officer shall be subject to appeal as if they were the decisions of the Collector who would have taken cognizance of the suits or proceedings if the Revenue or Judicial officer had not been so invested.

207. The Local Government may appoint an officer in addition to the District Collector, to exercise all or any of the powers of a District Collector under this Act.

208. In the scheduled districts of Ganjam and Vizagapatam the agent to the Governor, and in the scheduled district of Godavari the Government Agent, shall for the purposes of this Act be the District Collector, and the Assistant Agents in these districts shall for the same purposes be Collectors.

209. (1) All suits or proceedings brought or taken under this Act shall be brought or taken in the revenue division in which the holding or major portion of the holding in connection with which the suit is brought or the proceedings are taken is situated.

(2) Subject to the orders of a District Collector, a Collector or other Revenue officer may sit for the disposal of suits and proceedings under this Act in any place within the district.

CHAPTER XVI.

LIMITATION.

210. (1) Subject to the provisions of the next following section, every suit instituted, appeal presented, and application made after the period of limitation specified therefor in the schedule hereto annexed or in section 191, shall be dismissed, although limitation has not been set up as a defence.

(2) Nothing in this section shall revive the right to institute any suit, present any appeal or to make any application which would have been barred by limitation if it had been instituted, presented or made immediately before the commencement of this Act.

211. (1) Sections 7, 8, 9, 19, and 20 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

(2) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

212. (1) If any person—

(*a*) under colour of this Act dishonestly distrains, sells, or causes to be sold, any property, or

(*b*) resists a distraint duly made under this Act, or forcibly or clandestinely removes any produce duly distrained under this Act or makes a fraudulent conveyance of property to prevent distress for arrears ; or

(*c*) except with the authority or consent of the ryot unlawfully prevents or attempts to prevent the reaping, storing or otherwise dealing with any produce of a holding ; or

(*d*) having been ejected under section 163 from ryoti land in any estate occupies the same or any portion of the same land without the land-holder's consent ;

he shall be liable on conviction before a magistrate not below the rank of a magistrate of the second class to a fine which may extend to five hundred rupees.

(2) Any person who abets the doing of any act mentioned in sub-section (1) shall be deemed to have abetted an offence within the meaning of the Indian Penal Code.

(3) Persons entering the apartments of women for forcing open the outer doors of dwelling-houses contrary to the provisions of this Act shall be deemed to have committed house-trespass within the meaning of the Indian Penal Code.

General Right of Suit.

213. (1) Any person during himself aggrieved, (*a*) by any proceedings taken under colour of this Act, or (*b*) by neglect or breach of any of its provisions, shall be at liberty to seek redress by filing a suit for damages before the Collector.

(2) This section shall not be deemed to bar any right of action in a Civil Court in any case not taken out of its jurisdiction by this Act.

(3) Provided always that any person who files a suit for damages under sub-section (1), shall not be entitled to file a suit in respect of the same cause of action before a Civil Court.

Agent of Land-holders.

214. (1) Any act, appearance, or application before any Collector or Officer, which is required or authorized by this Act to be made or done by a land-holder, may be made or done also by an agent empowered in this behalf by written authority under the hand of such land-holder.

(2) Every notice required by this Act to be served on or given to a land-holder shall, if served on or given to an agent empowered as aforesaid to accept service of or receive the same on behalf of the land-holder, be as effectual for the purposes of this Act as if it had been served on or given to the land-holder in person.

(3) Every document required by this Act to be signed or certified by a land-holder, may be signed or certified by an agent of the land-holder authorized in writing in that behalf.

Rules under Act.

215. The Local Government may, after previous publication, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Collectors and Revenue officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(*a*) any power exercised by a Civil Court in the trial of suits ;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exerciseable by any officer under the Madras Survey and Boundaries Act, 1897 ; and

(*c*) power to cut and thresh the crops on any land and weigh or measure the produce, with a view to estimating the capabilities of the soil :

(2) prescribing forms and the mode of services of notices under this Act where no form or mode is prescribed by this or any other Act :

(3) as to the procedure to be followed in applications under this Act :

(4) as to the fees, costs and charges to be paid for the purposes of this Act :

(5) for the use of threshing floors, cattle-stands, village sites and other lands set apart for communal purposes :

(6) for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing pricelists :

(7) for the sale of distrained crops or products which are in their nature speedily perishable :

(8) for the survey of lands and the preparation of a record-of-rights and of a settlement record of rent :

(9) prescribing the superior revenue authority to whom appeals shall lie from orders of a Revenue officer on objections to a preliminary record of settlement of rent :

(10) prescribing the form in which registers shall be maintained by a Collector of suits and applications heard and decided by him : and

(11) generally for giving effect to the provisions of this Act.

SCHEDULE.

Part A.—Suits triable by a Collector.

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Court, if any, to which an appeal lies.
1	2	3	4	5	6
1	6	Suit to eject a trespasser from whom payment has been taken.	Two years ...	The date of receipt of recovery of payment. ...	District Court.
2	30	For enhancement of rent payable by a ryot.	None (subject to sections 37, 41 and 177).	None (subject to sections 37, 41 and 177) ...	District Court.
3	38	For reduction of rent	None (subject to sections 39, 41 and 177),	None (subject to sections 39, 41 and 177) ...	District Court.
4	40	For commutation of rent	None ...	None	(*a*) Against the decree so far as it allows or refuses commutation—District Collector. (*b*) Against the decree fixing the valuation at time of commutation in so far as it determines the sum to be paid as money rent or the time from which such commutation shall take effect—District Court.
5	55	To obtain a puttah	Three months.	The date of the expiration of three months after demand.	
6	56	To enforce acceptance of puttah ...	Do. ...	The date of the expiration of one month from failure to accept.	

Part A.—SUITS TRIABLE BY A COLLECTOR—(*Contd.*)

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Court, if any, to which an appeal lies.
1	2	3	4	5	6
7	65	For compensation for withholding receipt	Three months.	The date of payment ...	District Court.
8	77	By land-holder to recover arrears of rent.	Three years ...	The date when the arrear becomes due or, where there has been a suit or other proceeding for the purpose of ascertaining the rent, the date of the decree or order by which the rent is finally ascertained, whichever date may be later.	District Court.
9	88	For damages when distrained property is stolen, lost, damaged or destroyed.	Six months ...	The date when the property was stolen, lost, damaged or destroyed.	District Court.
10	95	By ryot to set aside distress ...	Fifteen days.	The date of service of notice on the ryot requiring him either to pay the amount demanded or to institute a suit.	District Court.
11	102	To recover from defaulting purchaser deficiency in price and costs, resulting from second sale.	Three months.	The date of the certificate of the sale officer.	District Court.
12	112	To contest the right of sale of a holding.	Thirty days ...	The date of service of notice on the defaulter requiring him to pay the amount due or to file a suit contesting the right of sale.	District Court.

57

Part A.—SUITS TRIABLE BY A COLLECTOR.—(*Contd.*)

Serial No.	Section of Act.	Description of suit.	Period of limitation.	Time from which period begins to run.	Court, if any, to which an appeal lies.
1	2	3	4	5	6
13	123	To recover from defaulting purchaser deficiency in price and costs resulting from second sale	Three months.	The date of the certificate of the selling officer	District Court.
14	127 (*c*)	For payment of the subsequent rent ...	Thirty days ...	The date of sale of holding ...	
15	144	To recover illegal exactions ...	Six months ...	The date of the levy of unauthorized charge	
16	149	To be indemnified against loss of rent when a holding is relinquished ...	Do. ...	The commencement of the revenue year succeeding that in which the relinquishment is made	
17	151 (1)	To eject a ryot	Two years ...	The date from which the land was rendered unfit ...	
18	151 (2)	For compensation or for an injunction or for the repair of the damage or waste.	Do. ...	When the damage was done or the waste began	
19	153	To eject a non-occupancy ryot ...	One year ...	The date on which the right to eject accrued	
20	160	To set aside warrant of eviction ...	Fifteen days or the period extended by the Collector under S. 159.	The date of service of the warrant.	
21	213	For damages not otherwise provided for	Three months.	The date of the accrual of the cause of action.	

Part B.—APPLICATIONS TO BE DISPOSED OF BY A DISTRICT COLLECTOR, COLLECTOR OR OTHER REVENUE OFFICER.

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Court, if any, to which an appeal lies.
1	2	3	4	5	6
1	15	As to the right to make an improvement or as to whether a particular work is or will be an improvement ...	None ...	None	District Collector.
2	16	To register improvements	None [subject to sub-section (3) of section 16] ...	Do	Against refusal to register—District Collector.
3	17	For recording evidence relating to an improvement.	None ...	Do	Against refusal to record evidence —District Collector.
4	25	For settlement of a fair and equitable rent.	One year ...	Date of admission to the land.	District Collector.
5	32 (2)	For revision of enhancement of rent. ...	None ...	None	District Court.
6	42	For alteration of rent with area ...	Do ...	Do	District Collector.
7	45	For determining sum payable by a person occupying land otherwise than by inheritance or legal transfer. ...	One year ...	The date of occupation ...	District Court.
8	46 (proviso)	For settlement of rent of land for the purpose of the section	None ...	None	District Collector.

Part B.—APPLICATIONS TO BE DISPOSED OF BY A DISTRICT COLLECTOR, COLLECTOR OR OTHER REVENUE OFFICER—(*Contd.*)

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Court, if any, to where an appeal lies.
1	2	3	4	5	6
9	48 (2)	For ejecting a non-occupancy ryot	Ten weeks prior to commencement of the revenue year next following.	The date of expiration of one month after service of notice on the ryot to pay enhanced rent.	District Collector.
10	54	For permission to file puttah in the office of Collector or other officer.	One year.	The commencement of the revenue year to which the puttah relates.	Do.
11	68	For permission to deposit rent in the office of Collector or other officer.	Six months.	The date on which the rent became due.	Do.
12	71 (3)	For repayment of deposited rent.	None.	None.	None.
13	74	For deputation of officer to make the appraisement or division.	Do.	Do.	Do.
14	89	By third person having a right or interest in distrained property.	Thirty days.	The date of distraint.	Do.
15	90	For delivery of property fraudulently conveyed to prevent distress or for payment of the value of such property.	Six months.	The date of which the arrear became due.	Do.

Part B.—APPLICATIONS TO BE DISPOSED OF BY A DISTRICT COLLECTOR, COLLECTOR OR OTHER REVENUE OFFICER—(*Contd.*)

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Court, if any, to which an appeal lies.
1	2	3	4	5	6
16	90	For restoration of distrained property forcibly or clandestinely taken away or for payment of the value of such property.	Thirty days.	The date on which the distrained property was forcibly or clandestinely removed.	None.
17	106 (5)	For determination of distress expenses.	Three months.	The date of sale-officer's decision.	Do.
18	114	For sale of holding.	As in section 115.	As in section 115.	Do.
19	131	To set aside sale of holding.	Thirty days.	The date of sale.	Do.
20	133	For grant of time to pay arrears due.	Do.	The date of proclamation of sale.	Do.
21	137	By a land-holder against an order under section 137 for the repair of an irrigation work.	None.	None.	District Court.
22	137	By ryots to execute works in default of land-holder.	Do.	Do.	Against refusal to authorise execution—District Court.
23	139	For the recovery of the cost of the repair of an irrigation work.	Three years.	The date of the completion of the repair.	District Court.
24	141	For determination of irrigated ot unirrigated rate.	None.	None.	District Collector.

Part B.—APPLICATIONS TO BE DISPOSED OF BY A DISTRICT COLLECTOR, COLLECTOR OR OTHER REVENUE OFFICER—(*Contd.*)

Serial No.	Section of Act.	Description of application.	Period of limitation.	Time from which period begins to run.	Court if any, to which an appeal lies.
1	2	3	4	5	6
25	145 (2)	For determining rent when holding is sub-divided or transferred.	Three months.	The date of sub-division or transfer.	District Collector.
26	149 (1)	For revision of the apportionment of rent made by a land-holder.	Six months.	Date of communication of land-holder's decision to the ryot.	Do.
27	158	For issue of warrant to enter upon and take possession of the premises.	Three months.	Date of the expiration of the revenue year for which the arrear was due.	Do.

GLOSSARY OF
SOUTH INDIAN REVENUE TERMS.

A

Achukattu, Lands divided into beds to admit and retain the water let in for irrigation; lands prepared for the cultivation of rice; rice fields.

Adangal, An account showing the cultivation in a village.

Adhemuni, When lands are watered from wells constructed at the expense of individuals, a property in the soil is recognised in the owners of the wells and distinguished by this term.

Adhika-Waram, In South India, a division of the crop in which a larger share is assigned to Brahmans or other persons.

Adinattukudaiyavan: *Adinkartan*, A proprietor; an owner; a landlord; an heir or inheritor.

Adi-pattadenellu, Waste or sweepings at the foot or bottom of a stack of straw; a band of straw tied round a stack of grain to prevent the clandestine removal of any part of it.

Adippukkuli, Wages for threshing corn.

Adippumutalanatu, quantity of grain threshed.

Admarjai, A term used in leases signifying failure from drought.

Agapat land, Land divided amongst the shareholders of the village periodically and held in severalty.

Alamangi, Compulsory service which the villagers were formerly compelled to render to Government officers or persons travelling on public duty.

Ali.-Kulikanom, The expenses of the tenant in improving land which are paid to him on the determination of the lease.

Alipadam, Lowest rice lands.

Ali Silavu, The expense of preparing gardens. It bears the proportion of 20 per cent to the established valuation of trees which is settled in making the *kulikkanom*.

Amsapathram, A deed under which the *Jenmi* makes over land for money borrowed, and the mortgagee pays himself the interest and gives to the *Jenmi* the *purappad* or residue of the *pattam*.

Anadi Banjar, Immemorial waste.

Anchana: *Anchina*, An estimate or appraisement of the probable amount and value of the crops on a field.

Anchara-Jabita, Estimate of each ryot's share of the value of the crop; an account of the estimated crop kept by the village accountant.

Aphalam, A tree past bearing.

Aravada Mera, Emoluments of village servants calculated on the extent of cultivation, either of all classes of lands or of wet lands alone.

Arenashti, A contribution levied for the purpose of making good certain losses incurred by Government. The tax is said to have been analogous to the existing license tax.

Ari-Mera, Certain perquisites enjoyed by some of the village servants.

Asal Jama, The original rents with which the lands were first charged in the books of the emperor, exclusive of all additions made since by Government.

Attukal Pasanam, River fed irrigation.

Attuveppu, Plantations bordering the seashore and rivers.

Ayakat, An account of the total land belonging to a village, including houses, wells, etc. and particulars of its distribution and conditions to be kept by the village accountant; the wet land is the nanja *ayakat*; the *ayakat* of a tank is the wet land irrigated by it; the word is sometimes, though incorrectly, used to designate the water—spread of the tank.

Ayanaya: *Ayasaya*, share of the crop paid to village servants.

Ayan Jama, The regular rent or tax on the land; the proper collections.

Ayilwar, Subsequent or recent; *Ayilwar nanja* means wet lands recently (or at any time since the *faisal*) converted into such from dry land.

Azmaish, Estimate of the crop while standing, made by a subordinate revenue officer.

B

Baghayat, Land, which, being supplied with water, and adopted to the cultivation of various useful and edible vegetable substances, is appropriated to their growth, or to that of betel, hemp, sugarcane, plantains, suffron, ginger, pepper, tobacco, onions, garlic, chillies, and other vegetables; also to that of fruit trees, and the areca, cocoanut and other palms. It is assessed at a higher rate than arable lands, according to the value of the produce.

Bail, Low-lying land of good quality, capable of producing annually three crops of rice or two crops of rice and one of some other grain or pulse, or two crops of rice both of which can be raised without recourse to artificial means of irrigation.

Banjar, Waste land.

Bara-Balute, The twelve kinds of village servants; the number, however, varied a good deal.

Batai, The division of the crop between the landlord, or the Government in that capacity, and the cultivator.

Beriz : *Berij*, The total sum or aggregate of an account; the total amount of a revenue assessment, the same as *Jama*; the total assessment of a district.

Bett : *Bettu*, Land capable of producing one crop of rice annually (called dry land in accounts.)

Bidu, Waste or fallow land.

Bijawari, Amount of seed required to sow rice land, in old accounts. In Canara, there is no record of the area of warg or holding, its place being taken in the accounts by a record of the *bijawari* or amount of seed required,

C

Chamayam, Generically the expense of improving land, specifically for fixtures, as opposed to *kuyikur* plantations, and *vettu kanom* tillages.

Chapavani, Concealment of cultivation for the purpose of evading Government revenue.

Chouki : *Chonkee*, A station or house at which tolls or customs duties are levied.

Chaver, Land granted by Rajas to the families of deceased heroes who fell in the performance of solemn vows to fight till death against the enemy.

Cherakkal, Land appropriated for the support of Rajas and temples.

Cherlabham, The profit of the earth or soil: the cultivator's share.

Cherujanmam, The hereditary right and perquisites claimed in their respective villages by the village astrologer, carpenter, goldsmith, washerman, barber, etc.

Chikat Puludi, Waste lands which have been ploughed, but not sown.

Cowle, The document granted by the collector, proprietor, or receiver of revenue to the subordinate payer of the revenue, or the actual cultivator, stating the terms of the agreement and the amount to be paid, and securing him against further demands; it frequently implies also that the contract or lease is granted on favourable conditions, as in the case of the cultivation of waste lands, for which a remission of rent is granted for a given period by a cowle; in Malabar applied to a grant by Government authorising the grantee to cultivate waste land.

D

Damashi, Proportionate distribution; money allowances paid to monigars and karnams in lieu of service inams resumed.

Devada Tirwa, The name given to the assessment one and a half times the dry assessment, charged in certain places on dry lands in which wet cultivation was made by means of wells.

Devasom, Temple property; temple.

Dittam Banjar, Land left waste out of the dittum or extent agreed upon to be the ryot's holding for the year.

Dumbala, An order for giving up the Government share of the produce to the cultivator.

Durmati Chitta, An ancient (A.D. 1801) account for each *warg* showing the amount of seed required to sow it, the assessment due thereon, and the rent produce (*hutwali*).

E

Enak or Inak, A certificate from mortgagor to mortgagee, or *vice versa*, announcing the transfer of his interest in the property.

Eri, A large reservoir or piece of water, partly artificial, constructed for purposes of irrigation.

Eyrewarry, Some deduction made in favour of non-resident ryots, so as to put them on an equal footing with the ryots of the village in which the lands they cultivated were situated.

F

Faisal, Original assessment; settlement first made by the British.

Faisal Jasti, An assessment or payment levied over and above the *faisal tirwa* and was in former years used to designate the charge now called *tirwa jasti*, *nir kuli*, etc.

Faisal Tirwa, The rate or tirwa fixed on the land at the time of the original assessment.

Fasli, The revenue year commencing with 1st July and ending with 30th June.

Fasli Jasti, (*a*) An extra crop or one crop more than usual.

(*b*) An extra cess imposed on one crop land when a second crop was raised on it in the same year.

G

Ghar Terige, A tax similar to *nela terige*, but supposed to carry proprietary rights.

Ghetti Tirwa, Assessment payable on lands cultivated with certain superior kinds of dry grain *e. g.* cholam, ragi, etc.,

Granddhavari, A register of documents or agreements relating to lands held by tenants under their jenmis. It is drawn up on palm leaves and kept by the Jenmis.

H

Hakkal, A tax charged for dry cultivation (temporary) on ordinary village waste. If within *Kumaki* limits, no tax is charged on '*hakkal*' cultivation, which is also free on all land, whether *kumaki* or not, in the Amara and Suli maganees, which once belonged to Coorg.

Hulus assessment, Assessment fixed in Dindigul by Mr. Hurdis.

Hutwali, Produce; *Riwaz Hutwali*, Normal rent produce; *Hazir Hutwali*, Actual rent produce.

Hyum, A branch of *Swarnadayam*, which is fixed, or at least subject to little variation, such as the produce of trees; the rent of collections made from ginger etc, on the hills.

I

Isumdar, The permanent holder of a village office.

J

Jaft, Distraint or attachment,

Jama, the amount, aggregate or total in general; but in revenue parlance signifies the total demand for assessment, or the beriz of a village or district.

Jamabandi, the settlement of the amount of revenue due from a village, division or district, and is specially used to signify the annual settlement with the cultivators under the ryotwari settlement.

Jari, Lands or villages permanently settled.

Jenmabhogam, the share in the produce of the land which is due to the jenmi.

Jenmakkolu, A fixed rent which cannot be raised, and the proprietor cannot remove the tenant.

K

Kadapa, The counter agreement executed by the tenant in exchange for his lease.

Kadarambam, Dry land; land which depends entirely upon rain for watering; the cultivation of such land.

Kaifiat, A statement or affidavit.

Kalavadi, Sweepings of a threshing floor.

Kalavasam, Hire or fee given to labourers or slaves, or inferior village servants, of a portion of grain from the threshing floor, or from the field, before the division of the crop.

Kalayi, Rice of a second crop. *Kalayi Nilam* is the opposite of *Ariri Nilam* which means land on which *Ariri*, a single crop is raised.

Kanganam, Supervision; inspection.

Kanganam fee, fee paid for watching the crop between the field and the stack; Superintendent's fee; contribution paid by the tenant, for the landlord's cost of the supervision of harvest out of the kudivaram.

Kanmoi, same as *Eri*.

Katnam, A present; a nuzzer,

Keippanam, Property given on marriage among Moplas which is returnable on termination of the marital state by death or divorce. The widow and children have a life-interest independent of the karnavan.

Kogam, Permanent,

Kolamkorvai, Land cultivated with paddy in the bed of tanks, just without the limits of the waterspread, the cultivation within the limits of waterspread being prohibited.

Kolapiramanam, A statement of the whole extent and of the divisions of a village and its lands, whether cultivated or waste.

Kollai, Dry soil, high ground not capable of artificial irrigation: a back-yard or, rather, an inclosed piece of ground belonging to one of the proprietors of a village, whether or not continuous to his dwelling.

Kollaipayir, Corn growing on high ground.

Kollanubham, The cultivator's profit after deducting expenses under the name *Vittu valli* or charges of cultivation. This is generally supposed to be a third of the gross produce.

Kolunavan, An occupant of land, other than the original hereditary owner, holding by lease or mortgage and under particular circumstances having the opportunity of converting his temporary tenure into permanent one; a tenant, a lease or mortgage holder.

Kudimajenmam, A tenure under which a nominal quit rent only is paid.

Kudimaramat, The customary labour rendered by villagers for the repair of irrigation works.

Kudiwaram, The share of the cultivator.

Kudiyan, A cultivating tenant.

Kudiyankur, Cultivator's share.

Kudiyirumappadu, A muri or document by which a *Jenmi* who is entitled to receive a *porappad* from a mortgagee assigns over the payment of it to a third person from whom he has borrowed money.

Kudiyirippu, A consideration of 2 fanams which before the land-tax a tenant used to pay to a proprietor for land taken for building alone; the payment was made as a taken of fealty to the Jenmi; the land taken was used for garden as well as for building purposes.

Kulgootason, In Tinnevelly, a fixed sum for which punja land was given up.

Kulikur, The share to which the tenant is entitled for digging pits and planting trees.

Kulisothana, Forming an estimate of the yield of a field by actually cutting the crop on a certain plot in each field and threshing and measuring the grain; in the Ramnad zemindary, it is done by cutting the crop on a plot of two koles by two koles.

Kuppa-Anchana, Estimate of the produce of field after the crop is gathered, but before it is measured.

Kuppadam, A portion of the produce of the taxable land in a village, payable to the mirasidar after the grain is thrashed.

Kushki, Dry.

Kuttadan, A species of paddy sown within the bed of tanks in the Palghat District.

Kuttikkanakkola, A kind of memorandum or register written upon the *karimbana* palm or palmyra leaf, in which is recorded the *Janma-karan's* pramanams or deeds with his tenants and the amount of the pattam share.

Kuttinellu: *Velinellu*, Hedge grain ; a contribution formerly made by *Jenmakars* for keeping up fences against cattle.

M

Majal. Land capable of producing annually two crops of rice, or one of rice and one of other grain.

Majare, A hamlet.

Manavari, Lands which depend solely on falling rain for irrigation.

Melkkoyma, The right the sovereign power possessed over property of which the ownership was in others.

Meni Vilachchal, Gross produce.

Melwaram, The upper or Government or Government's assignee's share.

Modan: *Punam*, High lands where a particular kind of paddy is capable of being cultivated, and where the oil plant and millet and toor are also planted.

Mogaru, Wet land growing one paddy crop, sometimes one grain crop besides.

Molamal, Certain limit in the bed of the tank within which cultivation is prohibited,

Moturpha, A tax formerly levied on artisans, shepherds, and owners of shops, looms, oil-mills, furnaces, indigo vats etc.

Moyinzabtia, List of revenue office establishment.

Muchalka, A written obligation or agreement, a bond, a deed ; it is commonly applied to a counter-part covenant on the part of the proprietors or cultivators of land agreeing to the rates of assessment imposed by Government or land-holder.

Mudaipunam, Old cultivated ground.

Mujara, Remission granted to ryots for adverse seasons.

Mulluvalli, same as *Ali Silavu*, Thorn expense; the expense of taking care of plantations.

Mul Patta, A formal title deed granted in the early years of British rule conveying to the grantee full proprietary or *muli* rights within certain specified boundaries.

Munnu: Nalu Meni Nilam, A paddy field requiring only one para of seed and capable of producing three and four fold.

N

Nalubhayam, The four products, applied to the produce collectively of the cocoanut, the betel-nut, the pepper, and the jack tree.

Nanja, Soil that is fit for the cultivation of rice, admitting of artificial irrigation, and hence commonly termed "wet ground or soil" in contradistinction to *punja* or dry.

Nanja Taram Punja, : *Nanja Seikal* : *Nanja Mel Punja*, Wet land like dry ; wet lands which are not fit for paddy cultivation for reasons such as the high position of the lands with reference to the water level of their respective tanks, and their consequent inaccessibility to water etc, those lands being therefore cultivated with dry grains such as raggy ,cholam, etc.

Nanja Vanpayir, Wet land cultivated with certain special crops called *Vanpayir*.

Naphargati, Individually ; man by man ; the *naphargati* account is that which shows the holding of each pattadar.

Nattam, That part of the village lands on which the houses of the mirasidars are built, as distinct from the lands attached to the village ; a village, specially one inhabited by Sudras, in opposition to an *agraharam* one inhabited by Brahmans.

Nattankal, A bed or part of a field kept moist in which the rice is sown for the purpose of being transplanted when it is grown up.

Nattu, Plants thickly sown for the purpose of being transplanted.

Nela Terige, Ground tax charged in bazaar sites and streets in large villages or town. Payment of this tax does not give a proprietary right.

Nettikatt, The crest of a hill adjoining cultivation ; the watershed of a hill.

Nikuti, Land tax payable in money introduced by the Mahomedans.

Nilavu Anchana, Estimate of the produce of a field before the crop is cut.

Nuzzer, *Nazarana*, Literally a present or gift, especially from a subordinate to a superior; but the term was more particularly applied to sums received as gratuities although in fact exacted by the State as fees or fines upon an assignment of revenue to an individual, or an appointment or succession to a jagir or other possession although hereditary; premium.

O

Obbadi, Treading out corn; threshing by means of cattle; generally used to denote harvest.

Olugu, An account kept by the village accountant of the measurement and extent of fields composing a village.

P

Padakanikai, A tax paid as a present to the landlord by ryots in certain villages in the Ramnad zamindary on *punja* lands.

Padugai, Land in the bed or on the banks of a river, especially fit for rice cultivation.

Paimali, Lands or crops destroyed by the marching of the troops; compensation for damage done to standing crops by the passage of troops.

Paimash, Land measurement. It denotes commonly the first settlement made by the British.

Palankatchi, A tax paid as present at a certain rate per village by all the ryots therein.

Palliyal, A low rice land; a piece of ground upon which paddy is grown so that it might be transplanted afterwards into a *nanja* field.

Panchamati, An estimate of the loss on paddy fields from want of care when the landlord's share is taken in kind; it is so called because it is usually estimated by five people.

Panibuditi, Lands which have been submerged by excessive rain by he breaching of a tank.

Panmala, Betel vine cultivation.

Para, Ten of the measure next in quantity to it, that is ten Idangalis or Dangalis, whatever may the quantity of the latter. It is nearer to the maracal than to any other measure at Madras.

Para of seed land, The quantity of seed necessary to sow an extent of land.

Paramba, Dry land as opposed to wet land.

Parari, A ryot who has disappeared from a village.

Pasivari, Tax on fish caught in ponds.

Patla, Wet land submerged during the heavy rains of the early months of the monsoon, and therefore growing only one paddy crop annually.

Pattadapac' Chal, Lands artificially irrigated and specially used to denote wet lands under wells.

Peishcush, The rent payable by the owners of permanently settled estates to Government.

Peshkar, An agent or deputy; a subordinate revenue officer. The term is not now applied in ryotwari tracts, but is retained in proprietary estates.

Podukal, Land which has been assessed, but is not in occupancy,

Policheletttu, 1, Renewal of a lease,

2. Fee paid to a proprietor on the occasion.

Pulli, Outturn estimate, made by village officers before harvest. In the Ramnad Zamindary pulli is made by what is called *kulisothana*

Punja Baghayat, Garden cultivation when made on *punja* land.

Punja Mel Nanja, Cultivation of wet crops on lands classified as dry.

Punja Taram Nanja, Dry land assessed as wet from having been cultivated with a wet crop.

Punja Tirwa, Assessment fixed on dry lands.

Punja Vanpayir. Special products such as chillies, brinjals, tobacco, saffron, sweet potato, etc.

Punja-Varavu-Nanja, Punja converted into wet.

R

Rekha or *Shist*, Land tax or standard rent imposed on *wargs* by ancient Hindu rulers of Canara.

Rivaz, A custom or *mamool*.

Riyayat, Abatement of assessment.

S

Sadirwarid, Contingent expenses; incidental village expenses; charge formerly levied on the ryots for supplying the public kacheri with ink, paper, oil and the like,

Sagubadi Dittam, Statement of the lands settled to be cultivated in the course of the year if the season permitted; settlement of or order for cultivation.

Sanubogattar, Chief tenants.

Sarasari, Average; in Canara the term is applied to the settlement of 1819 A. D., based mainly on the average of collections during the first few years of the British administration of Canara.

Sarasari Chitta, An account in which the *sarasari* settlement is recorded, together with all subsequent changes in the assessment. Also notes of any surveys, or valuations or inspections which may from time to time have been made.

Sarkari Gudde, Poramboke, or waste at the disposal of government.

Seikal, Land made fit for cultivation, or cultivated lands generally.

Shamil, Extra assessment added to shist by Mahomedan Governments in Canara.

Shavi, Withered crops.

Sivadayam, Miscellaneous revenue.

Swarnadayam, Rent or revenue receivable in money, not in kind.

T

Tadal punja, High land incapable of irrigation.

Taffrik, A kind of extra contribution which the village officers used *suo motu* to impose on the villages.

Takavi, An advance made by Government to ryots for seed-grain. digging wells and other agricultural purposes.

Tara, A village.

Taram, Sort, kind or class, specially applied to classification of soils.

Taram Kammi, A reduction of the *tarams* into which the land was divided.

Taram Tirwa, Assessment assigned to a particular class of land.

Teazgari, A deduction of assessment allowed in the case of lands held by Mahomedans and Brahmans.

Terige : *Terike*, A written lease, or a paper containing an account of the periods when instalments of the taxes are to be paid,

Tharao, The assessment of the settlement in 1819 A.D. in Canara.

Thari, Wet or irrigated land.

Tirwa Jasti, An extra rate ; generally a charge for water, when taken to land which has been classed as *punja* or unirrigated.

Tirwa Kammi, Remissions granted on irrigable lands cultivated with a dry crop, but which otherwise would have been left waste.

Tondivaram, The share of the cultivators in the divisions of the crop.

Tundupilli, The estimate of the grain produce of a small part of the village.

Tusikanom, The fee paid to the writer of a new kanom.

U

Ubhayapattom, Lease of rice fields in South Malabar.

Udavaram, The whole of produce of land.

Ulkandayam, Land the assessment of which is not paid to Government, but to some other person.

Umbalavari, A separate tax levied from karnams, ambalagars, and other village officers whose landed manyams have from before the permanent settlement been resumed by the Sircar, and who are allowed instead 5 or 10 per cent of the melwaram paddy (exclusive of the quantity received on account of swatantrums) derived by the Zemindar from the various villages the quantity of paddy falling to each share being in proportion to the particular original landed manyam.

Urallan, Trustee of an endowed temple.

Uttara, Land entrusted by the wargdar to a second party for some special object.

V

Valarthakadu, Compensation paid to tenant for maintaining trees of spontaneous growth.

Varadittam, Adjustment of the shares of the produce belonging to each party interested ; a register kept by the village accountant of the respective shares of the produce assignable to the cultivator or the proprietor of the state.

Varasattam, A table or register of the cultivator's share of the crop.

Varatundu, A deduction from the share of the cultivator added to the Government share.

Vartanas, Fees, perquisites, especially of grain, paid to the public servants of a village or town for their support. The assessment fixed on the *wargs* includes in many cases at least, the old *vartanas*.

Vettu-Kanom : *Vettu-chamayam*, Compensation payable to a tenant for clearing and levelling land.

Vittu Valli, Expenses of cultivation, such as ploughing, sowing, weeding, manuring, etc.

W

Waram, A share of the produce of land.

Z

Zabita, Established practice ; usage.

INDEX.

	PAGE,
Adima or Kudima, ...	249
Adhyayanam, ...	113
Adimayavana, ...	249
Agraharam, ...	113—115
Agricultural leases	
——Application of the Transfer of Property Act to, ...	207
——Meaning of, ...	207—200
——What are, ...	208—219
——Covenant for quiet enjoyment implied in, ...	218
——Assignee's liabilities in, begin from the date of assignment, and not when he obtains possession	218—219
——Tenancy by sufferance inapplicable to, ...	228
——Intention to determine tenancy before suit for ejectment not necessary in, ...	225
——When adverse possession begins to run in, ...	228
Ain Taram	58
Amani System	53
Amaram grants	132—133
Anna Srotriyam	108
Anubhavam	247—248
Appanam System	53—54
Ardhamanyam	107
Ardhamulgeni	229
Ari Jenm	250
Arudikarei, *See* PALABHOGUM	
Aryans, The	
——Essentially a race of agriculturists	1
——Evidence thereof in Rig and Atharva Vedas	1, 2
——Agriculture held in high esteem by, ...	2
——Adoption of settled agriculture by, ...	2
——Agriculture not confined to any particular class of ...	2
——Theories about their settlement in South India	2
——Premium given by, to agriculture	3
Arz Rokhas	105
Asara System	53
Assessment, *See* REVENUE	
——levied by virtue of Sovereign prerogative	59
——jurisdiction of civil courts in respect of	59
——person claiming to hold land free from, to prove it ...	59
——increase of, to be borne by mulgar	229
Atchandrarkam, *See* PALABHOGUM	
Attiper	258
Ayan lands	58

PAGE.

Beneficial Tenures, *See* GRANT ; INAM
—— existence of, traceable to remote antiquity 92
——names for grants by king and his minister ... ... 92—93
——application to troops 93
——practice of Mahomedan government in regard to ... 94
—— „ of the British government 94
——known now as inams ... ... 94—95
——known before as manyams 95
——meaning of inams 95
——construction of ... ... 100—103
——Division of, into major and minor inams 104
——„——into tarapadi and sanad or dumbala inams ... 105
——„——into Sikka Sanads, Daftar Rokhas and Arz Rokhas ... 105
——„——into three classes according to the degree of benefit ... 105—109
——„——into personal and service grants according to the object ... 109
Bharati, ... 113
Bharti warg 34
Bhattavritti 113
Bil makta inam 107
issoyee lands ... ... 133—134
Board Sipharas 34
Boundaries, conflict between, and extent ... ... 240—242
Brahmadayam 113
Cause of action.
——For suits in civil courts in respect of proceedings taken under the Revenue Recovery Act ... ... 271—272
Chaturbhagam 107
Checkbundi inams 109
Choondi payanam 250
Communal lands, in an estate 192
Coodirumpad or Nilamuri 250
Crories 69
Daftar Rokhas 105
Dakala and ghair dakala inams 109
Dasabandham inam ... ... 139—140
Defaulter
——who is a, under the Revenue Recovery Act ... ... 260—261
Dehaut 104
Dharkhast grants ... ... 64—66
Dharmasanam 115
Dittam 109
Dittum 54
Doratnam 134
Dufter gardens 109
Ejectment.
——plaintiff to prove possession and dispossession within twelve years of suit 38
——of occupancy ryots 179, 184
——of non-occupancy ryots ... ... 188—189

	PAGE.
Ejectment—*(Concld).*	
——compensation to ryots, occupancy or non-occupancy, before ...	190
Ekabhogum or ejaman gramam	47
Enfranchisement.	
——what is, ...	169
——in the case of personal inams, ...	169—170
——appointment of inam commission	171—172
——effect of, in the case of personal grants	171—172
——in the case of service grants	173
——what is, in the case of service grants	172
——effect of, on alienation of	
—— ,, personal inam	173
—— ,, service inam	173
Engagement	
——what is, ...	89
——in the case of zemindaries	89
——of inams	90
Estates Land Act,	
See OCCUPANCY, NON-OCCUPANCY, RYOTI LAND	
——principle of, ...	175
——division of lands into three classes	175
——occupancy rights now claimed under, ...	175
——application of, to other classes of tenants	278
Forfeiture	
——of leases, when takes place	222—223
——by denial of title...	223—224
——before suit	224
——effect of denial of title	225
——procedure before ejectment for	225
——waiver of	225—226
——relief against—	226
——when period of grace is provided for in the lease... ...	226
Geni or Sirkar-geni Warg	33, 34
Government	
——relation between, and ryots	21—24, 62
——right to levy assessment	59
——functions of, to construct new works of irrigation and to repair old ones	62
——power to regulate distribution of water	62—63
——liability of, in regard to damages	63
——not bound to repair irrigation works	63
——entitled only to melwaram	11, 78
Gramabhagam	105
Gramagarbha Khandriga	104
Grant, *See* BENEFICIAL TENURES; INAM	
——by sovereign, conveys only his right	12, 96
——hereditary,——	111—112
——restrictions implied in, ...	112
——for life or lives	112—113
——construction of beneficial	100—103

Grant—*(Concld).* PAGE.
——rules of construction of, ... 234—235
——application of contemporaneo expositio 236
——construction of particular grants ... ... 237—240
——value of Government Orders 240
——conflict between boundaries and extent ... ... 240—242
Har-sal-makta 108
Havelly lands
——what are 72
——treatment of, at the time of permanent settlement ... 76
Hosageme warg 34
Hungami Jodi 108
Inam, *See* BENEFICIAL TENURES; GRANTS.
——inamdar's liability to water-cess ... ... 86—90
——meaning of, ... 95
——*prima facie* grant of land revenue ... ... 95—96
——*presumption* the same in the case of major and minor inams ... 97
——as to grantee being owner of kudiwaram ... ... 194—195
——and whether granted before or after the permanent settlement ... 97
——grant of both waram, when 97
——interest of inamdar to waste ... ... 97—98
——persons competent to create, ... 98, 99
——zemindar's right to create, ... 99
——proprietorship of the soil to be proved by the grantee ... 101
——when passes ... ... 101—103
——inamdar's (unenfranchised) right to minerals 103
Inam (enfranchised)
——inamdar's right to minerals 104
——,, position 173
Inam Altamgha ... ... 116—117
Inam Commission
——appointment of ... ... 170—171
Inam Commissioner
——position of, ... 173—174
Inam title-deed
——construction of ... ... 102—103
——effect of, in the case of personal grants 171
—— ,, ,, of service grants 172
Inam Settlement
——option given to holders of beneficial grant at the time of ... 113
Ivumanyam 109
Jagir
——grants in ... ... 117—119
——application of the Pensions Act to, ... 129
Jenmampanayam 258
Jivitham 134
Jurisdiction of Civil Courts
——in respect of assessment 59
—— ,, dharkhast grants ... ... 66—67
—— ,, levy of water-cess ... ... 90—91

	PAGE.
Jurisdiction of Civil Courts—*(Concld).*	
—— „ personal grants	123—131
—— „ service grants	152—156
—— „ suits for rent under the Estates Land Act ...	192—197
Kadim warg	34
Kairati	116
Kambharti warg	34
Kaniatchi, Kaniatchidar, *See* MIRASI, TAMIL DISTRICTS	
Kanom	
——nature of, ...	251—252
——incidents of, ...	252—253
——forfeiture of, ...	253
——renewal of, ...	254
——of the nature of anamolous mortgages	254
——recovery of arrears of rent in, ...	255
——kanomdar's right to trees	255
Kanom Kulikkanom	246
Kanompattom	245
Kanompuram kadam	255
Karaima	250
Karamkuri	248—249
Karay villages	45—46
„ **Lands,**	46
Kareiyedu	46
Kasavargam	138—139
Katta Kanom	256
Kattiadom Kanom	255
Kattubadi, meaning of	107
Kattubadi inam	134—135
Kattukuttagai	108
Kayamgeni	229
Kayam Jodi	108
Khandriga	104
Khiraj	
——what is	13
——distinction between, and ooshr	13
——not formally levied in India	14
——levy of, did not give sovereign proprietorship over the soil ...	14—15
Kividuka or Keivida otti	259
Koyu or kari panayam	251
Kuduthalathar	33—34
Kulikkanom	245—246
Kulikkanom pattom...	246
Kumaki lands	34—35
Kumri cultivation	35
Kuttikkanom	246
Land-holder	
——ryots holding under, can claim the benefit of the Estates Land Act.	177
——who is, ...	177
——his advantages under the Estates Land Act	179, 183

Land-holder—*(Concld.)* PAGE.

—penalty for collecting illegal cesses 183
—relation with trespasser ... ... 183—184
—position of, with regard to communal lands in an estate ... 192

Lease

—definition of, ... 198
—presumption of permanency, when ... ... 198—199
—evidence showing permanency 199
—effect of forfeiture clause 200
—no right of re-entry when no words are inserted in a permanent and heritable tenure 200
—for terms of years ... ... 201—202
—year to year ... ... 201—202
—at will 202
—registration of, ... 202—204
—what leases are registrable ... ... 204—205
—consequences of non-registration ... ... 205—207
—agricultural leases, what are ... ... 207—209
—when leases begin to operate 209
—present possession not necessary... 209
—for immoral purposes 209
—determination of leases ... ... 220—226
—limitation against landlord when a lease for term is outstanding 226—227
— ,, in the case of a tenancy at sufferance... ... 227
— ,, from non-payment of rent 228
— ,, acquisition of qualified ownership by 228
—construction of, ... 242
—meaning of mokurari, istemrari ... ... 242—243
— ,, saswatam 243
— ,, kayam patta 243
— ,, enranraikkum 243

Lease for a term of years

—rights of lessee ... ... 201—202
—right of lessee to minerals 201
—known as vaidageni in South Canara ... ...

Lessee

rights of

—to accessions 214
—to encroachments ... ... 214—216
—to avoid the lease when property destroyed 216
—to make repairs and deduct the cost from rent... ... 216
—to make other payments 216
—to remove structures ... ... 216—218
—to emblements 218
—to transfer 218

duties of

—to make disclosures 219
—to pay rent 219
—to restore the property 219, 220
—to maintain boundaries 219

Lessee—*(Concld.)* PAGE.
——to give notice of encroachment to the lessor 220
——not to commit voluntary waste... 220
——not to build 220
Lessor
duties of
——to disclose material defects in the property leased ... 209—210
——to deliver possession ... ... 210—211
——to maintain lessee's possession 211
——rent suspended when lessee evicted by title paramount, ... 212
——but not mere trespass by stranger 212
——lessee not liable to pay rent when evicted by, ... 213
——the same rule applies when lessee is evicted even from part by the lessor ... ... 213—214
Limitation
——no, against government in resuming inams 160
——in the case of other grantors, ... 169
——against landlord, when a term is outstanding ... ... 226—227
——in the case of a tenancy at sufferance ... ... 227—228
——in the case of agricultural leases 228
——no, by tenant against landlord, in Malabar unless compensation for improvements is paid 228
——from non-payment of rent 228
——acquisition of limited ownership by 228
Maintenance grant
——nature of 119
——construction of ... ... 119—120
——obligation to provide maintenance how discharged 120
——right of reversion in an absolute grant invalid ... ... 120—121
——presumption in, ... 121
——right of grantee to minerals 121
Major inam 104
Malabar
——no presumption of government ownership over waste in ... 25
——property in land in ... ... 35—36
——hereditary rghts to land known as jenm 35
——their holders thereof as jenmi, jenmakaran or mutalalan ... 35
——revenue levied in first under the Mahomedan government ... 35
——Sir Charles Turner on property in, ... 36
——policy of government as regards property in, ... 36
——jenmi's power of disposition 36
Malabar Land Tenures
——the features of 244
——the various ... ... 244—259
——meaning of certain terms used in 252
Manavadoo village 45
Manyam, *see* INAM
Melkanom or melcharp 255
Melpattom 245
Merger,
——determination of leases by merger ... ... 220—221

Minerals. PAGE.
——ryotwari proprietor's right to 61
——zamindar's right to ... ... 84—85
——inamdar's (enfranchised) right to 104
—— ,, (unenfranchised) right to 103
——right to, under maintenance grants 121
——right of permanent lessee to, ... 200—201
——lessee for term of years to, ... 201
Minor inam 104
Mirasi, Mirasidar, *See* TAMIL DISTRICTS.
——Meaning of 29
——known as kaniatchi and swastium before its introduction ... 29
——as kunbava in Tangore 30
——introduction of the term, in the Madura District ... 30
——its meaning there 30
——misconception introduced by the term 30
Mirasi Tenure ... ... 40—52
——Meaning of 40
——difference between, and ryotwari tenure 40
——feature of 43
——Vellalar settlement in Tondamandalam ... ... 43—44
——views regarding it 44
——division of mirasi villages into agrahara vadiky and pandara vadiky, in the districts of Ramnad, Madura and Tinnevelly 45
——manavadoo villages, ... 45
——karay village, ... 45
——forms of holding of mirasi villages ... ... 46—47
—— ,, samudayam or pasankarei ... ...
—— ,, palabhogum, atchandrarkam or arudikarei, ...
—— ,, ekabhogum or ejaman gramam ...
——Samudayam properly so called or Pasankarei, ... 46
——Kareiyedu, ... 46
——Palabhogum, Atchandrarkam or Arudikarei, ... 47
——ekhabhogam or Ejaman gramam 47
——Special privileges of mirasidars of Chingleput, ... 48
——Tunduwaram and Swamibhogam, ... 48
——mirasidars' present position, ... 48
—— , right to waste ... ... 49—52
Moggu, ... 33
Motafysal System, ... 54
Moujé village, ... 104
Mukhasa,
——meaning of, ... — ... ... 135—136
——different kinds of, ... 136
——meaning of, in other places 136
Mulgeni, known as kayamgeni and nigdigeni 228, 229
meaning of,
——mulgeni leases granted for consideration known as ardhamulgeni, 229
——incidents of, ... 229
——division of, into nair and shud mulgeni, ... 229

Mulgeni—(*Concld.*) PAGE.

——meaning of nair mulgeni 222
——meaning of shud mulgeni 330
——rights of mulgeni tenants 230
——no presumption of, ... 230
Muli warg 33
Munpattom, Talapattam or Kattakanom 245
Muppatika-badi 107
Nair mulgeni 229
Nelkuttagai 108
Nigdigeni 229
Nirmudal 258

Non-Occupancy ryots

——who are, ... 188
——ejectment of. ... ... 188—189
——right of, to compensation on ejectment 190

Occupancy Tenure

——acquisition of occupancy right by ryots in possession of ryoti land ... ... 176—177
——under a land-holder 177
——incidents of ... ... 179—182
—— „ non-liability to ejectment, otherwise than as provided by the Estates Land Act 179,182
—— „ heretability and transferability 179
—— „ use of the land without impairing its value for agricultural purposes 179
——right to trees 180
—— „ to make improvements ... ... 180—181
—— „ to have evidence of improvement recorded ... 181
—— „ to make temporary improvements 181
—— „ non-liability to enhancement of rent... ... 181
—— „ right to demand pattas 181
—— „ right to exclusive possession of the crop ... 181
—— „ to repair irrigation works 182
——to division of the holding 182
——to relinquish 182

Old waste

——ryots of ... ... 189—190
Olungu System 54
Ooshr, *See* KHIRAJ

Otti

——definition of, ... 256
——characteristics of, ... 256—257
——enforcement of the right of pre-emption 257
——loss of the right 257
Ottikumpuram 258
Palabhogum 47
Palayams, unsettled 86

	PAGE.
Panayam	
——meaning of, ...	250
——different kinds of	250—251
Panchangam	113
Pandara Vadiky	45
Pannial, Pannaikaran, Padial	233
Parakudi, Payakari, Purakudi	232
——meaning of	232
Pasankarei, *See* SAMUDAYAM.	
Patam land	108
Pat'hak system	54—55
Patta (**ryotwari**)	
——given by government when first put into possession of land ...	60
——what is, ...	60
——is not evidence of title, but only of possession	60
——tree patta and land patta	61-62
Patta (**under the Estates Land Act**)	
——who can claim	186
——necessary only when the land-holder avails of the summary remedies given under the Act	187
——suit for rent maintainable without exchange of pattas and muchalikas	187
——the same principle applies to suits brought after the Act for rent accrued due before it	187
Pattadar (**ryotwari**)	
——rights of	60
——can alienate	60
——unless alienation recorded in collector's register, liable ...	60
——alienation without registration, valid between the parties ...	60
——transferee takes subject to the same conditions as the transferor...	61
——liable for charges incurred before alienation	61
——not to be charged for improvement	61
——liable to pay revenue, whether land cultivated or not ...	61
——right to minerals...	61
—— to trees	61
——tree pattadar and land pattadar	61
—— to relinquish	62
——mere laying waste, no ground to eject him	23—62
——right to water	63—64
——can claim only accustomed supply of water	63
——but not from any particular service	64
——right of cultivation	64
Pattadar (**Estates Land Act**) *See* OCCUPANCY TENURE	
Pattookut ryots, mirasidars in the old province of Dindigul known as	29-30
Pattukattu system	55
Payakari, *See* PARAKUDI.	
Peishcush how fixed...	78
Pensions, meaning of	130—131

PAGE.

Pensions Act, The
——law prior to the,... ... ... 123—125
——provisions of the, ... 125—126
——scope of the, ... 126
——construction of the, ... 126
——object of the, ... 126-127
——to what suits applies, ... 127-128
——application to suits against government and others ... 128
——no application to grants of land... 128
——nor to execution proceedings 128
——application of the, to suits on agreement 129
—— ,, to jagir 129
—— ,, to arrears of pensions 129
——meaning of "payable" 131
——time for production of certificate... 131

Permanent leases
——presumption of ... ... 198—199
——effect of forfeiture clause in 200
——right of lessee to minerals, ... 200—201
——no right of re-entry when no such words are inserted in ... 200

Permanently Settled Estates *See* POLIGAR, ZEMINDAR
——Hindu system of revenue administration ... ... 68—69
——creation of zemindars ... ... 69—70
——introduction of permanent settlement, ... 75
——creation of another class of zemindars 75
——effect of ... ... 76—78
——peishcush how fixed ... ... 78—79
——power of alienation of zemindar ... 79—80,82—84
——separate registration of alienated portions ... ... 80—82
——right to minerals of holders of ... ... 84—85
——liability to maintain existing tanks 85
——position similar to that of a person exercising statutary powers ... 85

Permanent tenancy
——known as mulgeni, kayamgeni and migdigeni in South Canara... 228—230
——in Tamil Districts, known as ulkudi, etc. ... ... 230—232
——in Malabar knows as saswatam 247

Personal grants
——Origin of 111
——restriction implied in hereditary... 112
——rules regarding grants for lives 112
——option given at the time of enfranchisement to convert into freeholds 113
——different classes of ... ... 113—119
——different kinds of, in the Presidency ... ... 121—123

Peruartham 259
Pohal Shrotriyam 104
Poligar or Palayakaran
——different kinds of ... ... 72—73

Poligar or Palayakaran—(*Concld.*). PAGE.
——position of ... ... 73—75
Poramboke, meaning of 42
Poruppu, meaning of, ... 107
Poruppu village lands 115
Possession
——Value of 37
——*prima facie* evidence of ownership 37
——presumed exclusive 37
——person in, has got title against the world except the real owner .. 38
——of a part presumed to be possession of the whole ... 39
——no such presumption in favour of a trespasser ... 39
——his possession confined only to part actually occupied by him ... 39
——presumption as regards, in respect of waste or jungle lands ... 39
Private Service grants, *Sse* ENFRANCHISEMENT, SERVICE GRANTS, RESUMPTION.
Private land.
——what is, ... 190
——tenants of, ... 190—191
——remedies against them ... ... 191—192
Pre-emption.
——in Otti in Malabar 257
——right of, in otti, how to be enforced 257
——loss of the right of 257
Property.
in land, beginning of 1
——in the first occupant under Hindu law 3
—— ,, under Mahomedan law, view of Mahomed ... 3
—— ,, and its interpretation by Abu Haneefa, and Abu Yusoof and Imam Mahomed 3
——view of Justinian 4
——view of Blackstone 4
——criticism by Maine 4
——acquisition of, by occupation according to Manu 4
——recognition by judicial decisions... 5
——sovereign entitled only to revenue 5
——Roman conception of 26
——English conception of 26
——Indian conception of 27
——writings of ancient Hindu Sages... 27
——Later Hindu Writers 28
——Mahomedan conception of 28
——recognition of transfer of, under Hindu law 29
——in the Tamil Districts ... ... 29—31
——in South Canara ... ... 31—35
——in Malabar ... ... 35—36
——in the Telugu district ... ... 36—37
Proprietorship of the soil.
——discussion, not merely academical, ... 6
——the view of the Marquis of Salisbury 6

	PAGE.
Proprietorship of the soil—(*Concld.*)	
—— authorities on, during Hindu and Mahomedan periods ...	7
——passages in Manu indicating private property in the subject ...	7-8
——view of Jaimini	8
—— „ Nilakanta	9
——description of a King by Manu	9
——its explanation by Wilson	9
——view of Jagannatha	10
——in conquered countries	11
——Sovereign's right limited to a share	11
——grant by Sovereign conveys only his right	12
——view of early European writers on	12
——introduction of the idea of, only after Mahomedan conquest ...	13
——their view in the case of conquered countries	13
——distinction between Ooshr and khiraj	13—14
——Khiraj not formally levied in India	14
——levy of, did not give Sovereign proprietorship of the soil ...	14—15
——Mahomedan theory and practice as applied to India not different from the Hindu law	15
——internal constitution of villages not affected by Mahomedan conquest	15
——judicial decision recognising the, in the subject during Hindu and Mahomedan periods	16
——English assumption of, ...	16
——conferring of, on permanent settlement	17—20
——the Privy Council on such conferring	17
——Sir Thomas Munro, on existence of private property ...	20
——Madras Government's view on	20—21
——proprietorship of waste lands generally presumed in Government...	24, 25
——opinion divided as regards, of Government in waste, in mirasi villages	24
——no such presumption in Malabar	25
Public service grants, *See* SERVICE GRANTS, RESUMPTION.	
Pungal System	233
Puranam	113
Rayayet Mukhasa	107
Registration	
——of leases	202—204
——construction of the Registration Act	204
——what leases are registerable	204—205
——consequences of non-registration...	205—207
Religious service grants	150—151
——alienation of	151
——resumption of, in whom vests	151
Relinquishment	
——by ryotwari proprietor, when and how can be done ...	62
——by occupancy ryot, ...	182
Rent	
——liability of occupancy ryots to pay	182—183

	PAGE.
Rent—*(Concld).*	
——enhancement of	184—186
——reduction of	186
——commutation of...	186
——recovery of arrears of	273—271
——modes of recovery	273
——by distraint	273
——how distraint is effected	273—274
——withdrawal of distraint	275
——fraudulent conveyance by distrainer	275
——sale of destrained property	275—276
——of ryot's holding...	276—277
——stoppage of sale	277—278
——setting aside of sale	278
Resumption.	
——meaning of, ...	157
——nature of, ...	158—160
——no period of limitation for Government to resume ...	160
——when liable to resumption	160-161
——who can resume	161
——grounds of	163—165
——in the case of public service	165—166
——,, of personal service	166—167
——,, of grants burdened with services	167—168
——,, of grants in remuneration of services	168—169
——notice of	169
——limitation for, in the case of grantors	169
Revenue, *See* Assessment ; Jurisdiction of Civil Courts.	
——measures for protection of, under Hindu Law	6
——sovereign's right limited only to	5—11
——recovery of arrears of	260—272
——,, meaning of landholder and revenue	260
——,, meaning of defaulter	260—261
——,, default by holders of permanently settled estates ...	261
——,, in the case of others	262
——,, distraint and sale of the moveable property of the defaulter ...	262—264
——,, distraint, how to be effected	262—263
——,, of crops and cattle	263
——,, loss of distrained property	263
——,, procedure in case of fraudulent disposition by defaulter ...	264
——,, when property is claimed by another	264
——,, sale of distrained articles	264
——,, attachment and sale of immoveable property of the defaulter ...	264—265
——,, each field in a patta liable for revenue due on the entire patta	264—265
——,, how proceedings are begun	265
——,, attachment how effected	266
——,, assumption of management by Collector	266—277
——,, release of property attached	267
——,, Sale	268—269
——,, procedure for setting it aside	268—269

Revenue—*(Concld.)* PAGE.
——confirmation of sale ... ... 269—270
——Collectors power of review 270
——validity of contracts entered into by defaulter before sale ... 270
——effect of revenue sale ... ... 270—271
—— ,, of sale under other Acts 271
——arrest of defaulter 271
——remedies against sureties ... ...
——suit for the Civil Court for proceedings taken under the Act ... 271—272
——cause of action for such suit 272

Revenue administration
——Hindu system of ... ... 68—69
——Change introduced by the Mahomedans 69

Rokkakuttagai 108

Ryot
——relation between, and Government ... ... 21—24
——no analogy between the Indian, and the English tenant ... 21—22
——the position of an Indian, ... 22
——the relation between, and the Government is one of co-proprietorship 22
——remedy against, for laying lands waste ... ... 23—24,62
——Government not entitled to grant lands to another for neglect of ryot to cultivate ... ... 23—24
——meaning of 59

Ryot (occupancy)
——rights of, under the Estates Land Act ... ... 179—182
——liability to pay rent ... ... 182—183
——ejectment of, ... 184
——enhancement of rent of, ... 184—186
——reduction of, ... 186
——commutation of, ... 186
——compensation to occupancy or non-occupancy before ejectment ... 190

Ryots (non-occupancy)
——rights of 188
——ejectment of ... ... 188—189
——right to compensation on ejectment 190

Ryoti land.
——meaning of, ... 175—176
——zeroity land is 176
——acquisition of occupancy rights by ryots in possession of ... 176—177
——provision regarding non-alteration of the character of, ... 178—179

Ryotwari tenure.
——difference between, and mirasi tenure, ... 40
——waste belongs to Government in, ... 40
——its first introduction in British possessions 57
——features of, ... 57
——Government share of produce commuted into a money payment under, ... 57
——such money payment under, how arrived at ... ... 57—58

Ryotwari tenure—(*Concld.*) PAGE.

——ryotwari lands known as taraf, sirkar, ayan or Government lands. 58
——proposals for fixing permanently the assessment under, ... 58
——not carried out 58
——Government of India's decision thereafter ... ... 58—59
——present settlement for thirty years 59
——assessment levied by virtue of Sovereign prerogative ... 59
——suits regarding assessment 59
——person with whom Government enters into direct relations is known as ryot 59
——issue of patta when first put into possession of land ... 60
——pattadar's rights, *See* PATTADAR ... ... 60—64
——rights and liabilities of Government ... ... 62—63

Samudayam 46
Sanad Inams 105
Santhathi Brahmasvam 247
Sarva Inam ... ... 105—106
Saverum lands 70

Separate Registration.

——of alienated portions of permanently settled estates ... 80—82

Service grants

——origin of 132
——division of, into 4 classes 132
——(1) private or personal service grants ... ... 132—138
——,,——principal kinds of ... ... 132—136
——,,——other kinds of ... ... 136—138
——(2) grants for public service ... ... 139—141
——,,——desabhandham inams ... ... 139—140
——,,——other kinds of ... ... 140—141
——(3) Village service grants ... ... 141—150
——jurisdiction of civil court in respect of ... ... 152—156
——(4) Religious service grants ... ... 150—151

Shivaijama grant,

——nature of 65

Shud mulgeni 230
Sikka Sanad, ... 105

South Canara.

——property in ... ... 31—35
——proprietors known as wargadars, mulavargadars or mulgars ... 31
——muli, mirasi, kaniatchi, swastium and jenmakari tenures various names for the ancient proprietary rights in land recognised by various authorities 32
——Sir Thomas Munro on its characteristics 31
——meaning of warg 32
—— ,, of wargadar 33
——division of warg into muli warg and geni or sirkar-geni warg ... 33
——meaning of mulawarg 33
—— ,, of walawargadar 33
—— ,, of kuduthalathar 33

South Canara—(*Concld.*) PAGE.
——no distinction now between wargadar, walawargadar and kuduthalathar 34
——meaning of geni or sirkar-geni warg 34
——division of warg into kadim and hosageme warg ... 34
——meaning of kadim warg 34
—— ,, of hosageme warg 34
——rights of hosageme wargadar, the same as those of mulavargadar 34
——division of warg into bharti, and kambarti 34
——division of kambarti warg into vaida, board sipharas and taniki 34
——kumaki lands, what are ... ... 34—35
——kumri cultivation, what is 35
——mulavargadar's right of disposition 35
——permanent tenancy in, known as mulgeni, kayamgeni, nigdigeni... 228—229
——temporary tenancy in 232
Sovereign
——entitled only to revenue on cultivated lands according to Hindu Law writers 5
——remedies for protection of revenue, under Hindu law ... 6
——description of, by Manu 9
——its explanation by Wilson 9
——right of, in conquered countries 11
——share of, limited to a share 11
——grant by, conveys only his right... 12
Srotriyam ... ... 115—116
Sudda inam 106
Sukhavasi tenant ... ... 231—232
Surrender
——of leases 221
——effect of ... ... 221—222
Swamibhogam 48
Tamil districts ... ...
——property in land in ... ... 29—31
——known as kaniatchi, swastium and latterly mirass ... 29
——known as kunbava in Tanjore 30
——its holders known as kanitchidars, swastiumdars and mirasidars 29,44
——as pattookut ryots in Dindigul ... ... 29—30
——introduction of the words mirasi and mirasidar in Madura District 30
——their meaning there 30
——misconception introduced by the introduction of the term mirasi 30—31
——power of deposition of mirasidars 31
——their liabilities 31
——permanent tenancy in, known as ulkudi, etc. ... ... 230—231
——temporary tenants in 232
Taniki warg 34
[T]af lands 58
[T]aram bharti system 55
Tarapadi inam 105
Tarisu

Telugu districts PAGE.
——meaning of 42
——division into two classes Sheykal carambo and Anadi carambo and 42
——property in land in the ... ... 36—37
——property in, probably of the same nature as in the other parts of the Presidency 36
——no traces of disposition at the time of the English conquest ... 37
——cultivators divided into kadims and payacarries... ... 37
——position of kadim ryot, the same as that of the ulkudi payacarri es of the south 37
Temporary Tenancy
——known as chalgeni in South Canara, ... 232
——as payakari, parakudi in Tamil districts 232,233
Thodu panayam 250
Tirwapat 40
Tope inam ... ... 109—112
Trees
——ryotwari proprietors right to 61
——of occupancy ryots to 180
——of permanent tenant 201,230
——of mulgeni tenants 230
——kanomdar's right to 255
Tree patta and land patta ... ... 61—62
Trbhagam 107
Tunduwaram 48
Ubhaya pattom 256
Ulavadai
——meaning of 233
Ulavadai mirasidars
——meaning of 233
Ulkudi tenants
——meaning of 231
——rights of 231
——sukhavasi tenants, a class of 231
Unduruthi panayam 251
Vellaversey ryots 233
Vaidageni 230
Vaida warg 34
Vedavritti 113
Veesabuddy system ... ... 55—56
Vellalar Settlement, in Tondomandalam
——tradition relating to 43
Verumpatta-Kulikkana or Kutiyiruppu 246
Vernmpattom ... ... 244—245
Village
——description of an Indian ... ... 40—42
——division of lands therein 42
Village offices

Village Offices—*(Concld.)* PAGE.

——in proprietary estates ... . 141—148
——in ryotwari districts ... ... 148—150
Walawargadar ... — — — 33
Warapat 42
Warg, *See* SOUTH CANARA.
Waste
——proprietorship over, presumed to be in Government ... 24—25
——opinion divided as regards the proprietorship of the Government over, in mirasi villages ... ... 24,49—52
——no such presumption as regards, in Malabar 25
——presumption of possession as regards waste and jungle lands ... 39
——ryotwari proprietor has no right to 40
——zemindar's right to 78,98
——inamdar's right to ... ... 97—98
Water
——right of Government to regulate distribution of, in ryotwari tracts 62—63
——in proprietary estates 63
——this right does not extend to flooding a ryot's land ... 63
——nor to disturb existing arrangements 63
Water cess
——liability of zemindars and inamdars to ... ... 86—91
——liability of ryotwari holder to 87
Yerwaddies 233
Zemindars
——meaning of 69
——no claim to the proprietorship of soil originally ... 69
——real position of ... ... 69—71
——hill zemindars and those on the plains, and their treatment ... 71
——defect in the system 71
——different kinds of ... ... 72—75
——creation of another class of, by permanent settlement ... 75
——no right to levy moturpha 79
——can levy ghattuthumulu 79
——power of alienation ... ... 79—80, 82—84
——right to minerals ... ... 84—85
——liability to maintain existing tanks 85
——position similar to that of a person under statutory power ... 85
——liability to water-cess ... ... 86—91
——power to create inams ... ... 99—100

THE MODERN PRINTING WORKS, MOUNT ROAD, MADRAS.